REPUBLIC OF RWANDA

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CRITICAL ANALYSIS OF THE PROTECTION OF SHAREHOLDERS, IN CASE OF COMPANIES' CRIMINAL LIABILITY UNDER RWANDAN CRIMINAL LAW

A dissertation submitted in partial Fulfillment of the academic requirements for the award of Bachelor's Degree in law

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Kigali, September 2024

DECLARATION

I, ZIRIMO TUMAINI Aline, declare that this dissertation is original, and it has never been presented anywhere in any university before for the award of an academic degree. All references made from other peoples' work are acknowledged in the footnotes and bibliography.

Student's signature:

Date: …………. /……………./

ZIRIMO TUMAINI Aline

APPROVAL

This is to attests that, the work in this research study entitled "**critical analysis of the protection of shareholders in case of companies' criminal liability under Rwandan criminal law**''; submitted for the partial fulfillment award of bachelor's degree with honors in international law, in Kigali Independent University is being carried out by ZIRIMO TUMAINI Aline.

Supervisor: HOD. NDIYAYE U. Innocent

Signature: …………………………

Date: ………………../………………/

DEDICATION

I dedicate this work to the Almighty God the owner of everything without whom the achievement of this work could not be possible.

To my supervisor, NDIYAYE U. Innocent, whose invaluable guidance, patience and insights have been instrumental in the completion of this wok.

To my friends, for their unwavering support, laughter, and belief in me during the most challenging moments and to all those who have inspired and motivated me long the way.

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Additionally, my heartfelt thanks go to my family and friends for their unwavering encouragement and understanding during this endeavor.

ZIRIMO TUMAINI Aline

LIST OF ABBREVIATIONS AND ACRONYMS

ART: Article

CEO: Corporate Executive officer

CFO: Corporate Financial Officer

CG: Corporate Governance

CGR: Corporate Governance Reform

CHAP: Chapter

CMA: Capital Market Authority

HTTPS: Hypertext Transfer Protocol Secure

IBID: ibidem

LLC: Limited Liability Company

LTD: Limited

OECD: Organization for Economic co-operation and Development

OL: Organic Law

ORG: Organization

PC: Penal code

PCC: Protected Cell Company

RDB: Rwanda Development Board

RP : Rôle Pénal

RRA : Rwanda Revenue Authority

RSE: Rwanda Stock Exchange

SMES: Small and Medium enterprises

TGI : Tribunal de Grande instance

TIN : Tax Identification Number

ULK: Université Libre de Kigali

UNGP: United Guiding Principles

VAT: Value Added Tax

WWW: World Wide Web

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GENERAL INTRODUCTION

This introduction analyses the topic and is subdivided from the Background of the study, problem statement, Research objective, Research questions, Hypothesis of the study, interest of the study, scope of the study, Research methodology and the subdivision of the study.

1.1. Background of the Study

The problem of criminal liability of legal entities to this day remains debatable especially where no individual within the company may easily be pinned down on the offence. This study aims to evaluate whether the measures of repression of criminal acts of companies don't victimize physical persons in Rwanda, to discover challenges and to propose a good measure of punishing companies for their criminal acts without victimizing shareholders. This will lead us to understand whether, a legal entity can be liable of criminal act.

Traditionally, corporate penalties have mainly involved fines or, in severe cases, business dissolution. Some critics argue against it, claiming that viewing a corporation as a legal entity rather than a collection of individuals is misguided. They believe it serves no meaningful purpose, as a legal cannot be imprisoned, making it difficult to distinguish from civil regulation. Additionally, the challenge of attributing liability to a company is a complex issue. In the twentieth century, judicial innovations led to the recognition of corporate criminal liability, which was previously impossible because corporations, being non-physical entities, could not appear in court. [1]

Traditionally, criminal liability was confined to individuals. However, as legal practices evolved, corporations could now be represented in court by individuals. Early cases, such as R v Birmingham and Gloucester Railway Company (1842), established that corporations could be held liable for failing to meet statutory duties. The nominalist theory adopts a derivative approach in which the responsibility of a corporation for a criminal offence can only be derived from or located through the responsibility of an individual actor. That is to say, an individual first commits the offence and then the responsibility of that individual is imputed upon the corporation. This means that if a fault cannot be traced to an individual in such a way as would render the individual criminally responsible then there can be no

[1] https://www2.stetson.edu/law-review/article/corporate-criminal-liability-in-the-twenty-first-century-are-all-corporations-equally-capable-of-wrongdoing/ corporate criminal liability in the twenty-century-first: are all corporations equally capable of wrongdoing?

corporate responsibility. The century's developments were driven by two main models of corporate liability vicarious liability and identification liability both of which are derivative.

These models are based on the nominalist view that corporations are mere collections of individuals, and thus, any corporate wrongdoing is ultimately attributed to individual members. In essence, corporate liability is derived from the criminal responsibility of individuals within the corporation[2]. According to the realist approach to corporate criminal liability, corporations can be held responsible independently of their members. This view emphasizes that responsibility lies with the corporation itself, based on its actions or inactions as an entity, rather than on individual members. The realist perspective suggests that if a law imposes a duty directly on a company, only the company should be held accountable for failing to fulfill that duty.

The direct liability model, introduced in 1944, is a key development in this approach. This model allows for the prosecution of corporations based on their own organizational conduct and fault, regardless of individual liability. Proponents argue that this model ensures that corporate offenses are punished even when no individual can be directly held accountable. It also facilitates imposing appropriate fines and serves as a deterrent against harmful corporate behaviors.[3]

Different forms of direct liability exist. Some focus on the corporation's failure to address offenses committed by its employees, while others emphasize the corporation's own wrongdoing. Some approaches highlight negligence, while others consider corporate policy and culture as sources of fault. Overall, the direct liability model represents a significant departure from traditional theories, which often rely on individual culpability.

In this context, we asked ourselves some the question to know whether a company, as a separate entity be morally accountable and liable for criminal acts. A legal company as a separate legal entity can be held morally accountable and legally liable for criminal acts, though the nature of this accountability differs from that of individual accountability.[4]

[2] https://www.kenyalaw.org/kl/index.php?id=1919#:~:text=Under%20the%20vicarious%20liability%20approach,agents%20would%20themselves%20be%20liable. The company as criminal: comparative examination of some trend's challenges relating to criminal liability.
[3] ibidem
[4] Moral accountability of corporations: M.E. McLaren, Business Ethics: a philosophical approach (2018) pp.102-120

In many jurisdictions, including Rwanda, a corporation can be held criminally liable for offenses committed by its employees or agents if these acts are carried out in the course of their duties and within the scope of their employment. This principle, often referred to as "vicarious liability" or "corporate liability," operates on the idea that a corporation, as a separate legal entity, can be responsible for actions that benefit or are associated with its operations. Legal frameworks typically allow for the imposition of penalties such as fines, sanctions, or other remedial measures against the corporation[5]. Moral accountability, however, is more complex. Corporations, being non-human entities, do not have moral beliefs or intentions. Moral accountability generally applies to individuals who can make ethical judgments and decisions. Nonetheless, corporations are often viewed through the lens of their decision-makers such as executives, managers, and employees who are expected to uphold ethical standards. In this sense, while the corporation itself does not possess morality, its actions are often scrutinized based on the moral principles guiding its leadership and operational practices.[6]

In developing democracies, the issue of corporate criminal liability often lacks serious consideration, as seen in Kenya. Kenyan courts have historically treated corporate criminality similarly to individual criminality without establishing distinct principles. Cases such as R v Rootes (Kenya) Ltd and EA Oil Refineries Ltd v Republic show that while companies have been prosecuted and convicted, the courts have not developed clear guidelines for companies' liability.[7]

Kenya's legal system relies on English law principles, which are only persuasive rather than binding. Consequently, there is a need for Kenya to create its own principles for corporate criminal liability. Kenyan law does recognize that both companies and their managers can be held liable for offenses. Specifically, Section 23 of the Penal Code holds that if a company commits an offense, its managers or those in control may also be held responsible, unless they can prove they were unaware of the offense or took all reasonable steps to prevent it. However, the law's broad application could implicate not only senior managers but also lower-level employees, which could be problematic. The Kenyan courts have accepted

[5]Corporations and criminal liability: ''corporate criminal liability'' in R.J. Goldstein & E.G.N. Barnett, criminal law and procedure (7th ed.,2020) pp.459-483
[6]https://www.kenyalaw.org/kl/index.php?id=1919#:~:text=Under%20the%20vicarious%20liability%20approach,agents%20would%20themselves%20be%20liable. Legal consequences of the criminal liability of legal entities
[7]https://www.kenyalaw.org/kl/index.php?id=1919#:~:text=Under%20the%20vicarious%20liability%20approach,agents%20would%20themselves%20be%20liable. ibidem

foreseeability as a test for negligence offenses, though this is still underdeveloped. Given the risks of inadequate regulation, Kenya urgently needs to develop comprehensive judicial and statutory frameworks for corporate criminal liability.[8] As for Rwanda, by analyzing the following articles: Article 88, article 25, article 89, Article 104: Articles 90, 91, 93 and 94 of Law number 68/2018 of 30/08/2018 the criminal liability of private entities with legal personality, such as companies and cooperatives, under Rwandan law, specifically when they support the crimes of genocide or crimes against humanity, According to Article 104 of Law No. 68/2018, these entities may face penalties such as dissolution or revocation of their authorization to operate in Rwanda.[9]

The complexities of holding entities liable under the concept of vicarious liability, requires certain conditions, including a master-servant relationship at the time of the crime. The criminal liability in Rwanda is generally considered personal, meaning individuals, rather than entities, are often held accountable for their actions unless specific circumstances justify the entity's liability.[10]

As for this study, in analyzing the protection of shareholders in case of companies' criminal liability under Rwandan criminal law, we will go in the logical thinking of the realism. We fully agree that companies as they enjoy legal personality have rights and obligations, their legal personality must be separated from its for their members. Legal entities can sue and be sued for the criminal acts they commit. To end impunity, companies must be punished for their criminal acts both with their accomplice. The problem raises when it comes to fine legal entities as mechanism of punishing them, shareholders are punished for the crime they didn't commit or to which they did not participate.

In that perspective, this research study will analyze whether the legal regime of penalizing legal entities don't victimize shareholders, to carry out challenges and to propose relevant solution for the punishment of legal entities.

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[8] https://deepblue.lib.umich.edu/bitstream/handle/2027.42/113460/wrtrw_1.pdf How and why should the criminal law punish corporations? By William Robert Thomas https://www.kenyalaw.org/kl/index.php?id=1919#:~:text=Under%20the%20vicarious%20liability%20approach,agents%20would%20themselves%20be%20liable.

[9] See the article 25,88,90,91,92 and 104 of the law no 68/2018 of 30/08/2018 of the law n0 68/2018 of 30/08/2018 determining offences and penalties in general

[10] https://brainajournal.com/manuscripts/Accepted%20Paper%20Salim_Final22.pdf corporate criminal liability for act committed by its members.

1.2. Significance of the study

The interest of this study is resumed into three ways such are personal, academic, and social interest

1.2.1. Personal interest

This study on "critical analysis of the protection of shareholders in case of companies' criminal liability'' is conducted in our motivation in the realization of a document in order to fulfill the academic requirements to get the Bachelor's degree in Law.

1.2.2. Academic interest and scientific interest

Academically and scientifically, this research will be useful for other scholars in law and offers a valuable contribution to the body of legal scholarship in Rwanda.

1.2.3. Social interest

Socially, the research contributes to the understanding of how companies, as opposed to individuals, can be held criminally responsible for unlawful activities without victimizing shareholders. It also offers an opportunity to explore the effectiveness and fairness of the legal mechanisms in place to prevent and punish companies' wrongdoing.

1.3. Scope of the study

The study is delimitated into 3 scopes: the scope in space, the scope in time and the scope in domain

1.3.1 Scope in space

The study is limited to the Rwandan legal system, focusing specifically on how criminal liability is applied to companies within Rwanda.

1.3.2 Scope in time

The study covers the period of the current Rwandan Penal Code law n° 68/2018 of 30/08/2018 from its adoption up to now.

1.3.4 Scope in domain

The study primarily concerns criminal law, with a focus on the statutes, regulations, and judicial interpretations that establish and govern the criminal liability of companies in Rwanda. It also delves into related aspects of company law.

1.4. Problem statement

A company is a separate legal entity from its owners, operating independently under the law with rights and obligations similar to individuals. It can enter contracts, borrow money, sue or be sued, hire employees, own property, and pay taxes. Once incorporated, a company gains a distinct legal identity, enabling it to act as a legal person with the ability to own assets and engage in legal actions on its own behalf.

These definitions lead us to ask ourselves two questions to know whether legal entities can be liable of criminal acts under Rwandan legal system, the second question is to know whether even if legal entities enjoy legal personality, fining them as a measure of punishment in case of criminal acts protects shareholders that can appear as innocent or non-culpable for the criminal act of the corporation.[11]

In criminal law, the criminal liability is individual. The article 88 of the law n° 68/2018 of 30/08/2018 stipulate that an offense can be linked to the entity's corporate if it was committed to realize that purpose, even if the purpose is not inherently criminal. Additionally, an offense can be attributed to a legal entity if it furthers its interests, whether financial or moral. However, the mere benefit to the legal entity from an offense is not enough to establish responsibility; there must be clear indications that the offense was committed on behalf of and to benefit the entity.[12] Penalties of companies should not affect the shares of shareholders and other creditors of the legal entity. This can be possible only if 'fine'' doesn't appear among measures of punishing legal entities.

The article 25 of the Rwandan penal code n0 68/2018 of 30/08/2018 defines the penalties applicable to institutions and organizations of the state or non-governmental organization with the legal personality among which we find the penalty of fine. But when you impose a

[11] https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer&httpsredir=1&article=2059&context=faculty_scholarship criminalization of corporate law, the impact on shareholders and other constituents

[12] See the article 88 of the law n0 68/2018 of 30/08/2018 determining offences and penalties in general

criminal fine on a publicly traded company or large corporation, it’s paid by the shareholders. The shareholders, though, aren’t directing the corporation. [13]

Engaging with a skeptic about the usefulness of corporate criminal law often leads to a fundamental question: What does it really mean to penalize a collective, fictional entity? This is a challenging issue to address. For instance, proponents of retribution argue that punishing wrongdoers is about ensuring they receive their just deserts. However, while retributive views are common in public discourse and politics, it’s not immediately clear how a corporation could have just deserts. Retributive justice usually involves some form of suffering, yet corporations, by their nature, are incapable of suffering.[14] What corporations can do, however, is pay fines. This is where much of the scholarly discussion on corporate punishment is concentrated. Fines are intended to deter companies’ crime by threatening the corporation's financial interests. But just as corporations lack the capacity to suffer, they also lack independent economic interests. Any "interests" they have are entirely derived from the interests of their individual stakeholders, such as shareholders, employees, and creditors.

Consequently, when fines are imposed on corporations, the true burden falls on these stakeholders, many of whom are likely innocent of any wrongdoing. This misalignment is one reason why corporate fines have not been very effective in deterring corporate misconduct. Forced rehabilitation would mean that we would stop fining corporations, as fines seem to be ineffective and unjust. As we increase the financial sanctions on companies, we don’t get a corresponding decrease in corporate criminality and fines tend to punish the wrong people, such as shareholders who haven’t done anything criminal. We need a mechanism in place that will translate criminal sanction into positive corporate action.

The issue of corporate-criminal fines is often misunderstood. It is typically seen as a problem because these fines cause harm to innocent third parties. However, the core problem isn't just that innocent parties are harmed this happens with any form of punishment, whether directed at individuals or corporations. The real problem is that corporate fines harm innocent parties

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[13] See the article 25 of the law n0 68/2018 of 30/08/2018 determining offences and penalties in general

[14] https://clsbluesky.law.columbia.edu/2017/12/12/how-to-punish-a-corporation/?amp=1#origin=https%3A%2F%2Fwww.google.com%2F&cap=swipe,education&webview=1&dialog=1&viewport=natural&visibilityState=prerender&prerenderSize=1&viewerUrl=https%3A%2F%2Fwww.google.com%2Famp%2Fs%2Fclsbluesky-law-columbia-edu.cdn.ampproject.org%2Fc%2Fs%2Fclsbluesky.law.columbia.edu%2F2017%2F12%2F12%2Fhow-to-punish-a-corporation%3Fusqp=mq331AQIUAKwASCAAgM%25253D&_kit=1 how to punish a corporation. Mahailis E. Diamentis

while failing to achieve any meaningful penological goals for the State. Let's begin with the basic fact: Corporate fines inflict harm on individuals. Although the fine is levied against the corporation, the burden does not necessarily remain with the entity itself. Instead, much like in any other sanction or tax system, the true impact often shifts to different parties.[15] In the case of corporate fines, this burden tends to fall disproportionately on those who are innocent. This statement raises two questions to understand the meaning of innocent parsons, and guilty persons.

To clarify terminology, the terms guilt and innocence are used in a formal sense here. An innocent person, in this context, refers to anyone who has not been criminally convicted of essentially the same crime, stemming from the same conduct that led to the corporation's conviction. the term culpable refers to individuals who, regardless of whether they have been legally found guilty or innocent, share some level of responsibility for the corporation's wrongdoing. A culpable person may have directly participated in the misconduct such as by carrying it out, authorizing it, or creating circumstances that made criminal actions necessary or they may have held a position where they were responsible for preventing it.

As a result, many members of a company found guilty may be culpable yet personally innocent; they were either not prosecuted, or their actions did not reach the threshold of criminal liability on an individual level. On the other hand, many shareholders are neither responsible for nor involved in the corporation's misconduct. Corporate fines tend to distribute harm in a consistent pattern, disproportionately affecting individuals who are innocent and not responsible for the misconduct. [16]

Typically, the most common form of corporate punishment, a fine, results in financial losses for shareholders, as reflected in a decrease in their equity value. Albert Alschuler expands on this by noting that not only do innocent shareholders bear the brunt of these fines, but innocent employees, creditors, customers, and even entire communities may also feel the negative effects. Scholars often emphasize the impact on shareholders, who, despite being the legal owners of the corporation and contributors of capital, are often far removed from the company's actual management. In this discussion, I will focus on the harm that is inflicted upon shareholders. According to Stephen Bainbridge pithily "When you punish an entity,

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[15] ibidem

[16] https://www.linkedin.com/pulse/how-should-we-punish-companies-pedro-sim%C3%B5es. how should we punish companies? By Pedro simoes published Mar2018

you're really punishing the entity's shareholders." In this, he echoes Glanville Williams' assertion that "a fine imposed on the corporation is in reality aimed against shareholders who are not responsible for the crime, is aimed against innocent persons.[17]

The key concept in moral philosophy known as the Doctrine of Double Effect, distinguishes between actions that are intended and those that are merely foreseen. According to this doctrine, there is a morally significant difference between intending harm and simply foreseeing it as a side effect. The Alschuler's argument that corporate punishment is meant to harm corporate members, particularly shareholders, ties into this doctrine.

The philosophical debate centers on the idea that a wrongful act is considered morally worse when done intentionally rather than as a foreseeable but unintended consequence.[18] The divergence in moral judgment is based on the subjective intentions of the wrongdoer. who is truly punished by corporate criminal liability? large fines tend to harm shareholders, who may not be in a position to monitor corporate managers' actions and often hold investments through indexed mutual funds. The idea of holding shareholders accountable for corporate crimes is questioned, as it is seen as unfair to expect average investors or even institutional ones to effectively oversee corporate activities. Some commentators suggest that the risk of corporate misconduct is just one of many that investors face.[19]

The companies' criminal liability in Rwanda can have significant repercussions for shareholders. When a company is fined or its assets are confiscated as part of a criminal penalty, the financial losses are borne by the company, which directly affects its profitability and, by extension, the returns to shareholders. In some cases, particularly where the penalties involve large fines or the closure of the company, shareholders may lose their entire investment. This has led to increased awareness and pressure on company management to ensure compliance with the law to avoid criminal liability.

Therefore, this study sought to analyze whether the provisions of the Rwandan penal code, when repressing companies' criminal acts, protects effectively shareholders from losses of their investment and the reputational damages.

[17] https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1191&context=facultyworkingpapers two ways to think about the punishment of corporations. Albert Aschur. Northwestern University school of law, a-alschuler @nothwestern.edu

[18] ibidem

[19] ibidem

1.5. Research questions

Through this research, the researcher seeks reasons for holding indirectly shareholders criminally liable for crimes committed by companies yet they are not the direct leaders of companies and criminal liability is individual. The following questions are analyzed and discussed in this study:

1. To what extent the legal regime of repression of legal entities' criminal acts protects shareholders, under Rwandan criminal law?

2. What are mechanisms that can be instituted so that shareholders be effectively protected in case of repression of legal entities' criminal acts?

1.6. Research hypothesis

1. The legal framework in Rwanda for holding legal entities criminally liable protects but not effectively shareholders by includes provisions such as provisions of limited liability defined by the article 2 paragraph 25 of the law no 007/2021 of 05/02/2021.[20]

2. Mechanisms such as: the corporate governance, the rehabilitation, the compliance program and the community service can not only protect shareholders from being victims of legal entities' criminal liability but can also help to prevent companies to violate laws and to avoid recidivism.

1.7. RESEARCH OBJECTIVES

The objective of this research is to critically analyze the legal framework in Rwanda concerning the protection of shareholders in cases where a company is held criminally liable. It aims to identify the strengths and weaknesses of existing laws, assess the impact of corporate criminal liability on shareholders' rights, and explore possible reforms to enhance shareholder protection. This research has two objectives: the general objective and the specific objective.

[20] See article 25 of the law n° 66/2018 of 30/08/2018 determining offences and penalties

1.7.1 General objective

The aim of this study is to identify and examine the regime of repression of criminal acts of legal entities and how that regime protects shareholders. To carry out challenges and to propose remedies.

1.7.2 Specific objectives

The specific objectives of this research study are to:

1 To analyze the extent to which shareholders are protected in case of companies' criminal acts under the Rwandan criminal law.

2. To propose to propose mechanisms of protection of shareholders in case of repression of legal entities' criminal acts.

1.8. Research Methodology

This research employs a mixed-method approach combining doctrinal, analytical, and comparative legal research methodologies. The study focuses on understanding the legal framework governing the protection of shareholders when a company faces criminal liability in Rwanda. It also explores how these legal protections compare to international standards and best practices in corporate governance and criminal law. During the research, the following methods and technics will be used:[21]

1.8.1 Technique of data collection

During this study the following technique were used:

1.8.2 Documentary technique:

The documentary technique involved in a comprehensive review of various legal documents and sources such as Legal Texts and Statutes[22], study legal commentaries, treatises, and academic articles that discuss the theoretical underpinnings and practical implications of criminal liability for legal entities in Rwanda. The documentary technique helped to analyze

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[21] https://www.researchgate.net/publication/333015026_Chapter_3_-_Research_Methodology_and_Research_Method by Sam Goundar p8

[22] ibidem

the statutory provisions, case law, and legal doctrines related to corporate criminal liability and shareholder protection.

1.8.3. Methods of data analysis

The data analysis for this research involved a qualitative approach, focusing on the interpretation and critical examination of legal texts, including Rwandan penal code, case law, and relevant legal doctrines. During this study the following methods will be used:[23]

1.8.4. Analytical method

The analytical method helped to critically analyze how the legal provisions in the Rwandan legal system concerning the criminal liability of legal entities operate in practice, assessing their effectiveness, loopholes, and implications, and to critically examine the effectiveness of these legal provisions, identifying any gaps or inconsistencies in the Rwandan legal framework. Additionally, a comparative analysis will be conducted to draw insights from other jurisdictions, providing a broader perspective on how different legal systems address similar challenges.[24]

1.8.5. Exegetic method

The exegetical method in the context of this research study, will help in detailed and systematic interpretation of legal texts, statutes, and regulations governing criminal liability and shareholders' rights in Rwanda. This method requires a deep analysis of the provisions within the Rwandan Penal Code, the Companies Act, and other relevant legal instruments that pertain to corporate criminal liability and shareholder protection.

The exegetical approach will also involve interpreting these laws in light of judicial precedents and legal doctrines, providing a comprehensive understanding of how they protect shareholders when a company faces criminal charges. By meticulously examining the legal language, the exegetical method allows for the identification of any ambiguities or gaps in the law that may impact the shareholders' rights.

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[23] https://www.researchgate.net/publication/333015026_Chapter_3_-_Research_Methodology_and_Research_Method by Sam Goundar p8

[24] https://www.thwink.org/sustain/glossary/AnalyticalMethod.htm the analytical method is a generic process combining the power of the scientific method with the use of formal process to solve any type of problem.

1.8.5. Comparative method

The comparative method helped to compare the Rwandan legal framework with other jurisdictions to evaluate similarities, differences, and best practices. To analyze how other countries handle the criminal liability of legal entities and how these approaches could inform or contrast with the Rwandan system.[25]

1.8.6. Historical method

The historical method is a research approach focused on studying and interpreting past events by systematically collecting, evaluating, and analyzing historical evidence like documents, artifacts, and oral histories. This method is widely used across disciplines to understand the influence of historical factors on current conditions. The historical method helped to examine how the concept of corporate criminal liability has evolved in Rwandan law, including the influences of historical events, societal changes, and legislative reforms[26]

1.9. Subdivision of the study

Apart from the general introduction and the general conclusion, this research study will be mainly organized into 3 chapters: the first chapter will be about Conceptual and theoretical framework, the second chapter will talk about the problematic of the protection of shareholders in case of companies' criminal acts and finally, the third chapter will present mechanisms to be adopted in order ensure the effective protection of shareholders in case of companies' criminal liability.

CHAPITRE 1. CONCEPTUAL AND THE HISTORICAL FRAMEWORK

The intersection of corporate criminal liability and shareholder protection represents a critical area of legal inquiry. As companies in Rwanda face the potential for criminal sanctions, the

[25] https://www.euacademic.org/BookUpload/9.pdf research methodology tools and techniques p78
[26] ibidem

repercussions on shareholders, who are legally distinct from the company itself, come into sharp focus. Shareholders, as owners of the company but not necessarily participants in its management or operations, may find themselves exposed to the consequences of criminal sanctions imposed on the company. This chapter aims to explore the foundational legal concepts and theoretical perspectives that guide this area of law by examining how Rwandan criminal law defines corporate liability, the nature of shareholder rights, and the intersection between these two domains and it establishes the basis for a deeper understanding of shareholder protection in cases of corporate criminal liability.

1.1.Definitions of key terms

In exploring the critical analysis of the protection of shareholders in the event of companies' criminal liability under Rwandan law, it is essential to define key concepts that form the foundation of this study. These concepts include criminal liability, legal entities, corporate criminal liability, and shareholders' protection and other key terms that will set the stage for a deeper analysis of the intersection between corporate criminal liability and the protection of shareholders, focusing on the legal framework in Rwanda.

1.1.1. Criminal liability

According to LESSEM, NEWSTAT & TOOSON, the criminal liability pertains to a situation where an individual can be legally held accountable for violating the law. It encompasses both potential and actual responsibility, implying that a person may be prosecuted and punished if they have committed a crime, or even if they are merely suspected of doing so. The fundamental principle of criminal liability is that it involves both a mental component and a physical component in relation to the alleged offense.[27]

For Thomson Reus, criminal liability is a legal concept that holds individuals responsible for their actions or omissions if they are found to have committed a criminal act.

He adds that it differs from civil liability because this one is based on the breach of contract or tort.[28] According to Deborah C. England, Attorney a person is liable or responsible for a

[27] https://www.lnlegal.com/blog/2021/december/what-is-criminal-liability-/ by Lassem, Newstat & Tooson, LLP December 20,2021

[28] https://legal.thomsonreuters.com/blog/what-is-criminal-liability/#:~:text=Criminal%20liability%20is%20a%20legal,of%20a%20contract%20or%20tort. Sneha Solanki january 23, 2024 definition and resources for defense attorneys.

crime when he or she has acted with criminal intent, as opposed to acting accidentally or lacking the ability to act deliberately. [29] The Cambridge dictionary defines the criminal liability as the responsibility for any illegal behavior that causes harm or damage to someone or something. [30]

The legal definition of criminal liability, join the definition of Thomson Reus. Criminal liability is a legal concept that holds individuals responsible for their actions or omissions if they are found to have committed the criminal act. This definition, raises another question, to know what is a criminal act.

1.1.2. Criminal act, offense, a crime or illegal behavior

A criminal act or actus reus, is an action or omission that is proscribed by the law and may be punished by the state. It refers to conducts or omissions that violate rules and are punished by the criminal law.

For an act to be qualified criminal, it must gather 3 elements which are: the actus reus, which refers to the criminal act itself that consisted in doing what the law prohibited or in omission, when you did not do what the law asks you to do; the means rea which refers to the intention to commit the crime at the time of the crime, ang the legal element, where is found the Sens of the general principle ‘’Nullum crimen nulla poena sine lege’’ (there is no crime without the law) which refers to the legal provisions that qualifies such act as an offense.[31]

The article 2 paragraph 1 of the Rwandan law n^0 68/2018 of 30/08/2018 determining offences and penalties in general defines an offense as an act or omission that breaches public order and which is punishable by the law.[32]

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[29] https://www.criminaldefenselawyer.com/resources/criminal-liability.htm criminal liability, by Deborah C. England, Attoney. Seattle University school of law updated 9/11/2010

[30] https://dictionary.cambridge.org/dictionary/english/criminal-liability#

[31] https://legal.thomsonreuters.com/blog/elements-of-crime/

[32] See the article 2 paragraph 1 of the Rwandan law n0 68/2018 of 30/08/2018 determining offences and penalties in general

1.1.3. An innocent person

Innocent essentially means not guilty. Specifically, it refers to an individual who is not responsible for the occurrence, event, or even crime that they are accused of[33]. This one is different from a guilty person, in criminal law, whom the court or jury has found evidence, beyond a reasonable doubt, that the defendant committed the crime they are charged with. It can also refer to the plea a defendant makes if they wish to admit to committing the crime they are charged with.[34]

1.1.4. The concept of penalty

Criminal penalties are those that penalize defendants for committing such crimes.[35]According to Merriam-Webster a penalty consist of the suffering in person, rights, or property that is annexed by law or judicial decision to the commission of a crime or public offense, trespassing forbidden under penalty of imprisonment; the suffering or the sum to be forfeited to which a person agrees to be subjected in case of nonfulfillment of stipulations, example when a penalty was imposed on the contractor for breach of contract; disadvantage, loss, or hardship due to some action, example of the loss of privacy is one of the penalties you pay for fame; a disadvantage (such as loss of yardage, time, or possession of the ball or an addition to or subtraction from the score) imposed on a team or competitor for violation of the rules of a sport; points scored in bridge by the side that defeats the opposing contracts[36]

1.1.5. Criminal law

According to Black's Law Dictionary, Criminal law is the body of law defining offenses against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted offenders.

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[33]https://www.law.cornell.edu/wex/innocent#:~:text=Innocent%20essentially%20means%20not%20guilty,to%20the%20relevant%20event%20itself.

[34] FindLaw's Criminal Law section summarizes the different degrees of guilt, which depend on each case's specific facts and circumstances. Source: Findlaw https://search.app/?link=https%3A%2F%2Fwww%2Efindlaw%2Ecom%2Fcriminal%2Fcriminal%2Drights%2Fthe%2Ddifferent%2Ddegrees%2Dof%2Dguilt%2Ehtml&utm_source=igadl%2Cigatpdl%2Csh%2Fx%2Fgs%2Fm2%2F5

[35] https://search.app/43ueXbqfZtuCC3jB8 the difference between criminal and civil penalties posted on May 26,2015

[36] Definition of penalty available on https://www.merriam-webster.com/dictionary/penalty#:~:text=1,in%20case%20of%20nonfulfillment%20of

Hans-Heinrich Jescheck and Jerry Norton define the criminal law as the body of law that defines criminal offenses, regulates the apprehension, charging, and trial of suspected persons, and fixes penalties and modes of treatment applicable to convicted offenders.[37]

Historically, criminal law was viewed as a means of addressing morally wrong acts. Criminal sanctions aimed to compel offenders to atone for the harm they caused and to pay for their moral guilt, with punishments being proportional to the severity of the guilt. However, in modern times, more practical and rational perspectives have emerged. Enlightenment thinkers like Cesare Beccaria in Italy, Montesquieu and Voltaire in France, Jeremy Bentham in Britain, and P.J.A. von Feuerbach[38] in Germany emphasized that the primary goal of criminal law should be crime prevention. The growth of the social sciences introduced new ideas, such as the protection of society and the rehabilitation of offenders. This shift in focus is evident in the 1998 German criminal code, which encouraged courts to consider the impact of punishment on an offender's reintegration into society. Similarly, the 1962 Model Penal Code from the American Law Institute highlighted that criminal law should provide clear warnings about what conduct is considered criminal and should work to rehabilitate offenders. In recent years, there has been a renewed focus on general prevention, which includes both deterring potential offenders and reinforcing societal norms.[39]

1.1.6. A Shareholder

A shareholder is a person or institution that has invested money in a corporation in exchange for a "share" of the ownership. A share is simply a divided-up unit of the value of a company. While owning shares in a business does not mean that the shareholder has direct control over the business's day-to-day operations, being a shareholder does entitle the holder to an equal distribution in any profits, if any are declared in the form of dividends.[40]

There are different share types that may be specified by a company.[41] These include: Ordinary shares, shares that are redeemable, shares that confer in terms of voting, shares that confer preferential rights in terms of distribution of share capital or income/dividends, shares

[37] Criminal law, definition types, examples and facts available on https://www.britannica.com/topic/criminal-law
[38] Criminal law, definition types, examples and facts available on https://www.britannica.com/topic/criminal-law
[39] ibidem
[40] https://www.bdc.ca/en/articles-tools/entrepreneur-toolkit/templates-business- guides/glossary/shareholder#:~:text=A%20shareholder%20is%20a%20person, %2C%20owned) %20by%20the%20shareholder
[41] ibidem

that don't confer any voting rights.[42] Every shareholder shall be issued with a share certificate, signed by the authorized member of the board, stating the number of shares owned by the shareholder, and their value. The share certificate shall take the format that is prescribed by the Registrar General's office. Every company shall keep, at its registered head office in Rwanda, a share register which shall have a complete record of all the shares and their holders.

Shareholders' protection concerns the safeguarding of the rights and interests of individuals who own shares in a company. When a company faces criminal liability, shareholders may be impacted by the consequences, such as diminished profits, loss of value in shares, or reputational damage. Therefore, understanding how shareholders are protected under the law is crucial to ensuring fairness and justice in the corporate structure.

1.1.7. Legal entity or legal person

A company or organization that has legal rights and responsibilities. Legal entities include types such as sole proprietorships, partnerships, corporations, and limited liability companies (LLCs). Each type has distinct characteristics, particularly in terms of liability and management structure. Understanding these entities is crucial for navigating business and legal matters, as they define the rights, obligations, and liabilities of the involved parties. legal entities help in providing benefits like liability protection and organizational flexibility.[43] the importance of choosing the right legal structure for a business, as it impacts liability, taxation, and ownership. Forming a legal entity like a corporation or LLC provides significant advantages, such as protecting owners' personal assets from business debts and legal claims. Additionally, legal entities offer tax benefits and flexibility, allowing businesses to deduct certain expenses and, in some cases, utilize pass-through taxation, where profits and losses are reported on the owners' personal tax returns. The research will concern the legal entity as a corporation. What is a corporation?

[42] https://academic.oup.com/jeclap/article/12/4/301/5909388# flogging the wrong: EU corporate fines violate the fundamental rights of shareholders.
[43] https://dictionary.cambridge.org/dictionary/english/legal-entity what is a legal entity (overview, definition and examples)

1.1.8. A corporation:

A corporation is a legal entity that is separate and distinct from its owners. It is a legal entity created by individuals, stockholders, or shareholders, with the purpose of operating for profit.[44] Under the law, corporations possess many of the same rights and responsibilities as individuals. They can enter into contracts, loan and borrow money, sue and be sued, hire employees, own assets, and pay taxes.[45]

A corporation is created when a business is incorporated by a group of shareholders with a common goal. Shareholders share ownership of a business, as represented by their holding of stock shares. It is typically formed by a group of people or a company and is granted certain rights and responsibilities under the law. Corporations can be created through registration and are generally classified based on their ability to issue stock and whether they are profit-oriented. They can also be categorized as aggregate (with multiple owners) or sole (with a single owner).[46]

Registered corporations have a legal personality recognized by authorities, and their shares are owned by shareholders whose liability is typically limited to their investment. This concept of limited liability, a key advantage over earlier business forms like sole proprietorships and partnerships, protects shareholders from personal liability for the corporation's contractual obligations and torts. This separation of control and ownership allows shareholders to avoid personal responsibility for actions taken by the corporation's controllers.[47]

In regions where corporations are classified based on their ability to issue stock, those permitted to do so are called stock corporations, and their owners are referred to as stockholders or shareholders. Corporations that cannot issue stock are known as non-stock corporations, and their owners are referred to as members. Corporations can also be categorized by their profit orientation, with some designated as for-profit and others as not-for-profit. Shareholders typically do not manage the corporation directly but instead elect a board of directors to oversee the corporation on their behalf.

[44] https://corporatefinanceinstitute.com/resources/accounting/what-is-corporation-overview/ a corporation, legal entity created by individuals or shareholders with the purpose of operating for profit
[45] ibidem
[46] https://en.m.wikipedia.org/wiki/Corporation
[47] ibidem

However, shareholders can also serve as directors or officers. In countries with co-determination, employees have the right to vote for representatives on the company's board of directors.[48]

A corporation, as a separate legal entity, operates independently from its owners, allowing it to conduct business, own property, enter contracts, borrow money, and face legal action. It benefits from unlimited life, meaning it continues to exist despite changes in ownership or management, and offers limited liability, protecting owners' personal assets from business debts. Ownership shares can be easily transferred, and professional management can be hired, while the corporation can raise capital through stock sales and bond issuance. However, incorporating a business incurs higher costs compared to sole proprietorships or partnerships, and corporations face double taxation on earnings and shareholder dividends. Additionally, corporations are required to maintain extensive documentation, including annual reports, tax returns, and other legal filings.

1.1.8.1 Corporate criminal liability

Corporate criminal liability is a corporation's responsibility for each prohibited act committed through its members. in accordance with this definition, individuals are accomplice of crimes committed by corporations. Under the law of corporate criminal liability, corporations are liable for the acts of employees when employees are acting within the scope and nature of their employment; and a corporation will not be liable for its employees' acts unless the acts are designed to benefit the corporation

1.1.8.2 Corporate crimes

Corporate crime is a crime committed by a corporation or business entity or by individuals who are acting on behalf of a corporation or business entity. Environmental crimes are the most common type of corporate crime. It is important to remember, however, that individuals rather than companies initiate crimes. They may do so on behalf of a corporation, but a human hand is always involved in corporate crime.[49]

[48] https://en.m.wikipedia.org/wiki/Corporation
[49] https://study.com/academy/lesson/corporate-crime-definition-types-examples.html corporate crime definition causes and examples

Examples of corporate crimes: Mortgage fraud, embezzlement, Enron, accounting, bribery, insider trading, cybercrime, environmental crimes, espionage, securities fraud, tax evasion, political corruption, insurance fraud, making false claim, Market manipulation: extortion, pump and dump, unfair trade practices. Environmental crimes are the most common type of corporate crime.[50] The article 171(extortion), 174(fraud), 178(embezzlement or destruction of a mortgaged property), of the Rwandan law no.68/2018 of 30/08/2018 determining offenses and penalties in general, and article 56(environmental crime) of the law no.48/08/2018 define the corporate illegal behavior and their penalties.[51]

The chapter VXII (article 339-353) of the law no. 007/02 of 05/02/2021 provides acts of a company that are considered as offences and their penalties:[52] simple fraudulent bankruptcy, acts which qualify as simple fraudulent bankruptcy ,grave fraudulent bankruptcy, fraudulent actions by directors of an insolvent company related to bankruptcy, poor book-keeping, refusal to provide information about an insolvent company, carrying on a business fraudulently, fraudulent acts committed by a director, disclosing information that may jeopardize investigation, disclosing false information on shares, contradicting a disqualification order and fraudulent dealing with bankruptcy.

1.1.8.3. Corporate veil

The corporate veil is a legal concept which separates the actions of an organization to the actions of the shareholder. Moreover, it protects the shareholders from being liable for the company's actions. In this case a court can also determine whether they hold shareholders responsible for a company's actions or not.[53] Therefore, if the company incurs debts or contravenes any laws, then the members are not liable for those errors and enjoy corporate insulation. In simpler words, the shareholders are protected from the acts of the company.

1.1.8.4. Piercing the Corporate Veil

It means looking beyond the company as a legal person. Or, disregarding the corporate identity and paying regard to humans instead. Piercing the corporate veil is a legal doctrine where a court holds a corporation's shareholders or directors personally liable for the

[50] ibidem
[51] https://rdb.rw/eia/environmental-law-2018.pdf
[52] See the chapter VXII of the law no. 007/2021 of 05/02/2021 governing companies
[53] https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=4647&context=clr Cornell Law Review article: "Finding Order in the Morass: The Three Real Justifications for Piercing the Corporate Veil"

company's debts. This concept, also referred to as veil-piercing, disregarding the corporate entity, or lifting the corporate veil, disrupts the usual separation between the corporation's liabilities and the personal assets of its shareholders or directors.[54]

Normally, this legal separation shields the personal assets of individuals from being used to satisfy the corporation's obligations. In cases of veil-piercing, the court sets aside this legal distinction, allowing creditors to pursue the personal assets of shareholders or directors after securing a judgment against the corporation that remains unpaid. This practice is especially prevalent in close corporations. Courts are generally reluctant to pierce the corporate veil because the principle of limited liability is fundamental to encouraging investment in public markets, where the benefits of liquidity and diversification are key.[55] However, veil-piercing is permitted in instances of serious misconduct, particularly when the corporation is misused for personal purposes.

The criteria for piercing the corporate veil can vary across jurisdictions. Typically, courts apply the "unity of interest" test to determine if corporate funds were improperly used for personal gain, indicating a disregard for the corporation's separate legal identity. Additionally, courts may consider whether the corporation is undercapitalized, suggesting that the shareholders or directors never intended to operate the business in a legitimate manner. A lack of compliance with corporate formalities, such as maintaining necessary licenses or filing required reports, can also support a decision to pierce the veil. It's important to note that the standards and application of veil-piercing vary from one jurisdiction to another.[56]

1.1.9. Deterrence

Deterrence is the theory that criminal penalties do not just punish violators, but also discourage other people from committing similar offenses. Many people point to the need to deter criminal actions after a high-profile incident in which an offender is seen to have

[54] https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=5077&context=ndlr “Procedure at the Intersection of Law and Equity: Veil Piercing and the Seventh Amendment"
[55] ibidem
[56] https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=5077&context=ndlr “Procedure at the Intersection of Law and Equity: Veil Piercing and the Seventh Amendment"

received a light sentence. Some argue that a tougher sentence would have prevented the tragedy and can prevent a similar tragedy from taking place in the future.[57]

The three components of deterrence theory are certainty, celerity and severity. Certainty applies to the likelihood of being caught. The threat of a severe punishment is not effective if there is no possibility of ever being caught. Celerity applies to the speed of a consequence. A punishment imposed immediately after an offense is more effective than one that is imposed years after the offense. Severity of punishment is a necessary component since a rational person might commit a crime that brings a benefit even if punishment is swift and sure when the punishment is insignificant. In addition, the punishment serves as an example to others in society so that everyone is aware that a certain action is unacceptable.[58]

Under the economic theory of deterrence, an increase in the cost of crime should deter people from committing the crime, and there is evidence that individuals who believe they are likely to be arrested and punished are less likely to commit a crime than those who do not expect to be captured or punished. To increase the cost, the government can increase the likelihood that a person will be caught, the speed with which a person receives a punishment, or the severity of that punishment. Determining the extent to which these changes actually deter crime involves testing the assumption that the crime rate will be lower if there is an increase in the certainty, celerity, or severity of legal punishment.[59]

Deterrence is the theory that justifies punishment on the basis that it creates disincentives for those contemplating committing crime in the future. Deterrence prevents future crime by frightening the defendant or the public. The purpose of criminal punishment for deterrence theorist is to alter criminal’s incentives by reducing the expected utility of committing a crime. The two types of deterrence are specific and general deterrence. Specific deterrence applies to an individual defendant. When the government punishes an individual defendant, he or she is theoretically less likely to commit another crime because of fear or another similar or worse punishment. General deference applies to the public at large. When the public learns of an individual defendant’s punishment, the public is less likely to commit a crime because of fear of the punishment the defendant experienced.

[57] https://law.mpg.de/event/deterrence-crime-and-the-criminal-justice-system-myths-and-realities/ deterrence, crime, and the criminal justice system: myths and realities
[58] ibidem
[59] https://law.mpg.de/event/deterrence-crime-and-the-criminal-justice-system-myths-and-realities/ deterrence, crime, and the criminal justice system: myths and realities

The most obvious aim of sanctioning is to prevent future harm through deterrence. Most corporate crime theory has been deterrent-based, in the sense that the purpose of instituting sanctions has been to discourage violations and encourage good practice. A distinction might be drawn between deterrence and compliance. Deterrence implies that in the absence of the threat of a sanction, companies will decide rationally to engage in wrong doing where that is financially beneficial. But companies may want to comply with the law for a range of reasons. First, habit may lead to compliance.[60]

Most corporate actors comply with the law most of the time because it is the law. Secondly there is the symbolism attached to breaches of the law, particularly criminal, law, which lead firms to try to comply. Thus, companies abhor the idea of being branded a criminal. The language of deterrence might be used here, but compliance results in part form a desire to be seen as acting within the law.[61] This is viewed as a search for prestige. However, there are hurdles to the deterrence theory. First, there may not always be individual criminals when a company commits a crime. Companies' misconduct can be as a result of organizational defects, broken channels of communication, inadequate compliance mechanisms and so forth for which no individual is responsible. Additionally, deterrent- based corporate fines draw on general corporate coffers, so they harm individual wrongdoers and innocent parties alike.[62]

1.2. Generalities on companies

Companies are legal entities that operate as separate and distinct from their owners (shareholders or members) meaning they can own property, enter into contracts, sue, and be sued in their own name, independent of their owners. They are established to engage in commercial, industrial, or professional activities with the goal of generating profit. Companies can take various forms, such as corporations, partnerships, or limited liability companies (LLCs), and their structure determines the rights and obligations of their shareholders.

[60] https://journals.ezenwaohaetorc.org/index.php/ULJ/article/download/2687/2813 corporate crime and punishment: the need for rethink.
[61] ibidem
[62] https://journals.ezenwaohaetorc.org/index.php/ULJ/article/download/2687/2813 corporate crime and punishment: the need for rethink.

1.2.1 Historical background of the companies' criminal liability in Rwanda

Rwanda's legal system, like many African countries, was significantly influenced by colonial powers, primarily Belgium. During the colonial period and even after independence in 1962, the legal system was largely based on the Belgian civil law system. Traditionally, under Rwandan law, criminal liability was seen as a personal matter, with only individuals being held responsible for criminal acts. The idea of holding legal entities (such as companies) criminally liable was not initially part of the legal framework.[63]

1.2.1.1. Pre-Colonial and colonial periods

Prior to colonization, Rwanda operated under a traditional justice system primarily focused on resolving conflicts within the community rather than enforcing state-imposed laws. Legal responsibility was individual and centered around restoring social harmony, rather than punishing entities like corporations, which did not exist in the modern sense. Colonial Period (1897-1962): Rwanda became a German colony in 1897, and later, after World War I, it was placed under Belgian administration as part of the League of Nations mandate. The Belgian colonial administration introduced the civil law system to Rwanda, heavily influenced by Belgian law.[64] During the colonial period, the legal framework in Rwanda was primarily concerned with regulating individual behavior, with little to no focus on the criminal liability of legal entities. The Belgian legal system itself was slow to adopt corporate criminal liability, and this reluctance was reflected in the laws applied in Rwanda. Corporations were seen as mere abstractions, and criminal liability was thought to be inherently personal.

1.2.1.2. Post-Independence (1962-1994)

1962: Rwanda gained independence from Belgium on July 1, 1962. Following independence, Rwanda adopted a legal system based on the Belgian civil law tradition, which continued to focus on individual liability. The early post-independence penal codes did not provide for the criminal liability of legal entities.

1977 Penal Code: The Penal Code enacted in 1977 (Law No. 21/77 of August 18, 1977) was a comprehensive legal framework that addressed various aspects of criminal law.

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[63] https://su-plus.strathmore.edu/server/api/core/bitstreams/7cb3b511-2024-4d93-b9d6-bdcc090269bd/content International Influence: The Influence of International Law on the Criminal Liability of Legal Entities in Rwanda,".

[64] Ibidem

However, similar to previous laws, it did not explicitly recognize the concept of criminal liability for legal entities. The focus remained on individual criminal responsibility, with legal entities being held liable only through civil or administrative penalties.

1994: The Rwandan Genocide had a devastating impact on the country's legal system, with widespread destruction of infrastructure and loss of legal professionals. In the immediate aftermath, the focus of the legal system was on rebuilding and addressing the massive number of crimes committed during the genocide. During this period, the concept of corporate criminal liability was not a priority, as the legal system was primarily focused on individual accountability for genocide-related crimes.[65]

Late 1990s: As Rwanda began to rebuild its legal and institutional frameworks, there was a growing recognition of the need to address corporate wrongdoing, particularly in the context of post-conflict reconstruction and economic development. However, the legal framework still did not explicitly address the criminal liability of legal entities.

1.2.1.3. Introduction of Corporate Criminal Liability

The concept of criminal liability for legal entities began to gain traction globally towards the end of the 20th century. Rwanda started to incorporate this concept into its legal framework in the 2000s as part of broader legal reforms aimed at modernizing the country's legal system and aligning it with international standards.[66]

The Constitution of Rwanda, adopted in 2003, laid the foundation for a modern legal system that would incorporate various aspects of international law, including the concept of corporate responsibility. Although the Constitution did not explicitly address corporate criminal liability, it established the principle of equality before the law, which would later be interpreted to include legal entities.

The 2004 Penal Code of Rwanda (Organic Law No 01/2012/OL) was one of the first legal instruments to explicitly recognize the possibility of holding legal entities criminally liable for certain offenses. This was a significant shift from the previous legal regime, which did not foresee the criminal responsibility of legal entities.

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[65] https://su-plus.strathmore.edu/server/api/core/bitstreams/7cb3b511-2024-4d93-b9d6-bdcc090269bd/content International Influence: The Influence of International Law on the Criminal Liability of Legal Entities in Rwanda,".

[66] Ibidem

2004 Penal Code Drafting: In the mid-2000s, Rwanda began drafting a new Penal Code to replace the outdated 1977 code. During this process, there was significant debate about whether to introduce criminal liability for legal entities. The influence of international legal standards and the need to combat corporate crimes, such as environmental violations and financial fraud, played a crucial role in shaping the new code.[67]

2004 Law on Anti-Corruption and Other Economic Offenses: In 2004, Rwanda enacted a law specifically targeting corruption and economic crimes (Law No. 23/2004 of 15/08/2004). This law was one of the first to introduce the concept of corporate liability, allowing legal entities to be held accountable for certain economic offenses. However, this was still primarily a civil and administrative liability rather than criminal liability.[68]

2008 Penal Code Draft: By 2008, the drafting of a new Penal Code was well underway, with explicit provisions for the criminal liability of legal entities. This marked a significant shift in the legal landscape, as Rwanda sought to hold companies and other legal entities accountable for crimes committed in their name or for their benefit. The 2012 Penal Code and Establishment of Corporate Criminal Liability

May 2, 2012: The new Penal Code (Law No. 01/2012/OL) was enacted, marking a watershed moment in Rwandan legal history. For the first time, the Penal Code explicitly provided for the criminal liability of legal entities.

Penalties and Impact: The 2012 Penal Code allowed for a range of penalties against legal entities, including fines, temporary or permanent closure, dissolution, and confiscation of assets. This was a significant development, as it meant that companies could face severe financial and operational consequences for criminal conduct, which in turn would impact shareholders.[69] The introduction of this concept was partly driven by the recognition that companies and other legal entities could engage in illegal activities that could have severe social, economic, and environmental impacts, and that it was necessary to hold these entities accountable.

[67] https://su-plus.strathmore.edu/server/api/core/bitstreams/7cb3b511-2024-4d93-b9d6-bdcc090269bd/content
[68]https://www.ombudsman.gov.rw/index.php?eID=dumpFile&t=f&f=30702&token=adb4fb7dde310a9010741bdedd60735547c6c3b2 2004 Anti-Corruption Law: For the text of the 2004 law that introduced early forms of corporate liability, see "Law No. 23/2004 of 15/08/2004 on Prevention and Combating of Corruption and Related Offenses," available through Rwanda's Ministry of Justice
[69] https://www.refworld.org/legal/legislation/natlegbod/2004/en/97471

1.2.1.4. Legal Framework for Criminal Liability of Legal Entities (Post-2000s)

The Penal Code allows for various penalties to be imposed on legal entities, including fines, dissolution, temporary or permanent closure, and even confiscation of property.

1.2.1.5. Ongoing Developments

Since the introduction of corporate criminal liability in 2012, there have been several cases where legal entities have been held accountable for criminal acts. These cases have primarily involved economic crimes, environmental violations, and corporate governance failures. The Rwandan legal system continues to evolve in this area, with ongoing efforts to ensure that corporate criminal liability is effectively enforced[70]

1.2.1.6. Corporate Governance Reforms

In response to the risks posed by corporate criminal liability, there has been a growing emphasis on strengthening corporate governance in Rwanda. Companies are increasingly adopting robust compliance programs and internal controls to mitigate the risk of criminal liability. This has also led to greater awareness among shareholders of the importance of corporate governance in protecting their investments[71]

1.2.2. Categories of companies in Rwanda

A company is a legal entity formed by an individual or a group of individuals. Companies can have a variety of different structures, from single-owner sole proprietorships to large corporations with many shareholders. Some business structures provide greater personal liability protection for their owners. Companies can be either public or private[72] and must generally be registered on the state level. A private company restricts the right to transfer its shares and debentures; limits the number of its shareholders to one hundred; and also prohibits any invitation to the public to subscribe for any shares or debentures of the company.

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[70]https://www.ombudsman.gov.rw/index.php?eID=dumpFile&t=f&f=30702&token=adb4fb7dde310a9010741bdedd60735547c6c3b2 2004 Anti-Corruption Law: For the text of the 2004 law that introduced early forms of corporate liability, see "Law No. 23/2004 of 15/08/2004 on Prevention and Combating of Corruption and Related Offenses," available through Rwanda's Ministry of Justice.

[71] ibidem

[72] See article 5 of the law n° 007/2021 of 05/02/2021 Governing companies, categories of companies under Rwandan law

If a company has only one shareholder, it is presumed to be a private company when a public company refers to entities that have offered shares to the public through an initial public offer and its securities have been listed in one or more stock exchanges. This is also different from government owned firms.

In Rwanda, the five types of domestic companies include: companies limited by shares, companies limited by guarantee, companies limited by both shares and guarantee, unlimited companies and protected cell company. Each of these structures has specific implications for criminal liability, especially concerning the treatment of shareholders in the event of criminal misconduct by the company.[73]

1.2.2.1. Company Limited by Shares

The liability of shareholders is limited to the amount unpaid on their shares. When a company limited by shares is found criminally liable, the company itself is held accountable, not the individual shareholders. Shareholders are protected from personal liability beyond their investment in shares unless they are directly involved in the criminal conduct. The company's assets may be subject to fines or penalties, but shareholders' personal assets remain protected.[74]

1.2.2.2. Company Limited by Guarantee

In this type of company, members' liability is limited to the amount they agree to contribute in the event the company is wound up. Similar to companies limited by shares, if a company limited by guarantee is criminally liable, the company is held responsible, and members are not personally liable unless they directly contributed to the offense. The agreed guarantee amount could be at risk if the company faces severe financial penalties, but members' personal assets are generally protected.[75]

[73] See article 2 of the law n° 007/2021 of 05/02/2021 Governing companies, categories of companies under Rwandan law

[74] See article 2 paragraph 26 of the law no 007/2021 of 05/02/2021 Governing companies, categories of companies under Rwandan law

[75] See article 2 paragraph 27 of the law n° 007/2021 of 05/02/2021 Governing companies, categories of companies under Rwandan law

1.2.2.3. Company Limited by Both Shares and Guarantee

This type of company combines the characteristics of both companies limited by shares and those limited by guarantee. Shareholders hold shares while also providing a guarantee. In this hybrid model, liability remains limited both in terms of unpaid shares and the guaranteed amount. Criminal liability affects the company itself, with shareholders and guarantors generally shielded from personal liability unless they are personally involved in the criminal act. The company's assets may be targeted for penalties, while personal assets of shareholders and guarantors remain protected to the extent of their respective commitments.[76]

1.2.2.4. Unlimited Company

For this company, members of an unlimited company have unlimited liability for the company's debts, including potential liabilities arising from criminal conduct. Unlike the other structures, if an unlimited company is criminally liable, shareholders may be personally liable for all the company's obligations, including fines and penalties resulting from criminal conduct. This means that shareholders' personal assets could be at risk to satisfy the company's debts, including those arising from criminal penalties.[77]

1.2.2.5. Protected cell company

In Rwanda, the Protected Cell Company (PCC) is a unique and specialized corporate structure primarily used in the financial and insurance sectors. It is distinct from the traditional forms of companies like those limited by shares, guarantee, or unlimited liability companies. A Protected Cell Company operates under a framework that allows it to create distinct and separate cells within the company, each with its own assets and liabilities, which are segregated from those of other cells and the PCC as a whole. [78]

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[76] See art See article 2 paragraph 25 of the law no 007/2021 of 05/02/2021 Governing companies, categories of companies under Rwandan law

[77] See art See article 2 paragraph 28 of the law no 007/2021 of 05/02/2021 Governing companies, categories of companies under Rwandan law

[78] https://taxjusticeafrica.net/sites/default/files/publications/Protected-Cell-Companies-%20%20Kigali%20International%20Financial%20Centre%5B42%5D.pdf protected cell company as potential tax avoidance vehicles under the Kigali international financial center by Everlyn Kavenge Muendo

The article 2 paragraph 24 of the law n° 007/2021 of 05/02/2021 Governing companies, defines the protected cell company as a company in which a single legal entity consists of a core linked to several cells, each with separate assets and liabilities.[79]

The PCC itself can be held criminally liable as a legal entity, similar to other companies. However, the unique feature of the PCC structure is the segregation of assets and liabilities. If one cell is involved in criminal activity, only that specific cell's assets would typically be at risk of criminal penalties or fines.[80] The assets of other cells and the core PCC remain protected unless there is involvement or complicity at the core company level. If a particular cell within a PCC is found criminally liable, any financial penalties or consequences will be confined to that cell. This means that the financial impact of criminal liability does not spill over into other cells or the core company, provided that the segregation of assets is properly maintained and no other cells or the core company were involved in the criminal activity.

Shareholders in a PCC are generally protected from personal liability, similar to companies limited by shares. Their liability is confined to the extent of their investment in the company. However, if shareholders are involved in the criminal conduct within a particular cell, they could be held personally liable, especially if their actions directly contributed to the offense.

The key Considerations with this type of company is: the segregation of Assets: The effectiveness of the PCC structure in protecting assets across cells relies on the strict maintenance of segregation. If segregation is not properly managed, or if the core company is implicated in the wrongdoing, other cells could be exposed to liability; the direct Involvement: Like other corporate structures, directors, officers, and shareholders can be personally liable if they are directly involved in the criminal activity. For instance, if a shareholder knowingly facilitates or participates in illegal activity within a cell, they could face criminal charges and personal liability. The PCC structure provides additional layers of protection for shareholders and cells by isolating risks to specific parts of the company. This makes it an attractive option for businesses needing to manage different risks within separate cells, particularly in the insurance industry. However, while the structure offers significant protection, it does not exempt individuals from liability if they are directly involved in criminal misconduct.

[79] See article 2 paragraph 24 of the law no 007/2021 of 05/02/2021 Governing companies, categories of companies under Rwandan law
[80] Protected cell company, an introduction available on https://assets.kpmg.com/content/dam/kpmg/mt/pdf/2017/01/mt-protected-cell-companies.pdf

1.2.3. Characteristics of a public company

As a starting point, every company is assumed to be public company unless it is stated in its application for incorporation that it is a private company. A public company generally can be subscribed to by members of the public and there is no limit to the number of shareholders that a public company may have.

According to the article 9 of the law n° 007/2021 of 5/02/2021 governing companies, company is considered public if its incorporation documents allow its members to transfer their shares in the company; if its incorporation documents do not prohibit invitations to the public to subscribe for its shares and debentures; and if its certificate of incorporation states that it is a public company.[81]

1.2.4. Characteristics of a private company

A private company is limited to having a maximum of one hundred shareholders and a prohibition to inviting the public to subscribe for shares or debentures. Furthermore, there are some restrictions on the right of shareholders to transfer their shares. It is presumed that a company with one single shareholder is a private company.[82]

Companies are generally organized to earn a profit from business activities, but some may be structured as nonprofit charities. They may have a single owner or many thousands of owners. A company has many of the same legal rights and responsibilities as a person does, such as the ability to enter into contracts, borrow money, pay taxes, own assets, sue (or be sued), and hire employees. The article 8 of the law no 007/2021 of 5/02/2021 governing companies provides characteristics of a private company. A private company, restrict the right to transfer its shares, or debentures; it limits the number of its shareholders to one hundred (100) but excluding persons employed or formerly employed by the company; and it prohibit any invitation to the public to subscribe for any shares or debentures of the company.[83]

[81] See article 9 of the law n° 007/2021 of 05/02/2021 Governing companies, categories of companies under Rwandan law
[82] See article 8 of the law n° 007/2021 of 05/02/2021 Governing companies, categories of companies under Rwandan law
[83] ibidem

5. Incorporation of companies in Rwanda

Incorporation is a legal process used for a company to be formed and have legal personality separate from that of its owners.[84] A company is incorporated once it has been registered by the Office of the Registrar General. Any person intending to open a business must apply for registration under this law. Law no. 07/2009 of 27/04/2009 relating to companies; and Law no. 14/2010 of 07/05/2010 modifying and complementing law no. 07/2009 of 27/04.2009 relating to companies. A business may be started by one or more individuals, or a corporate person(s) for commercial or business purposes.[85]

1.2.5. Procedure of registration of a company in Rwanda

Registering a company in Rwanda is a straightforward process primarily managed through the Rwanda Development Board (RDB). The first step is to choose and reserve a unique business name through the RDB website, ensuring that it is not already in use. Once the name is reserved, the next step is to prepare the necessary documents, which vary depending on the type of company you are registering. These documents typically include identification details of the shareholders and directors, the company's articles of association, and proof of business location, among others. After gathering the required documents, you will lodge them with the RDB to initiate the registration process. Upon successful registration, a Certificate of Incorporation will be issued, marking the legal formation of your company.[86]

Following the company registration, it is essential to register for taxes with the Rwanda Revenue Authority (RRA) to comply with Rwanda's tax regulations and facilitate smooth business transactions. Depending on the nature of your business, you may also need to obtain additional permits and licenses from relevant authorities. Finally, to conduct financial transactions, you will need to open a corporate bank account with one of Rwanda's commercial banks. These steps ensure that your company is legally established, tax-compliant, and ready to operate within [87]Rwanda's business ecosystem.

[84] See article 2 paragraph 23 of the law n° 007/2021 of 05/02/2021 Governing companies, categories of companies under Rwandan law

[85] https://rdb.rw/wp-content/uploads/2018/02/Company-Booklet1.pdf company act-Rwanda development board by Louise Kayonga

[86] ibidem

[87] https://afrisetup.com/rwanda/services/company-registration-in-rwanda/ company registration in Rwanda/registering a company in Rwanda.

1.2.5.1. Registration of a domestic company (not VAT)

A domestic company is a company incorporated in Rwanda. It may take the form of: company limited by shares, company limited by guarantee, company limited by both shares and guarantee or unlimited company. The four types of domestic company follow the same online registration procedure (although requirements may vary). The company code on the incorporation certificate also serves as tax identification number (TIN) and social security number.

Companies do not have to register for VAT while their turnover is still not exceeding Rwf 20 million for any period of 12 month or Rwf 5 million in 3 consecutive months in the preceding quarter. Once one of these two thresholds is exceeded, registration must be done within the next 7 days from the end of that year or quarter. Small and medium enterprises, those that fulfil at least two of the three following conditions: net capital investment up to Rwf 70 million, annual turnover up to Rwf 50 million, and up to 100 employees; are exempted from trading license tax during the first 2 years following their establishment. They will only have to register at District level after the exemption period expires and begin paying trading license tax latest by January 31st, annually starting from the 3rd year following the incorporation date.

1.2.5.2. Registration of a domestic company (VAT liable)

Small and medium enterprises, those that fulfil at least two of the three following conditions: net capital investment up to Rwf 70 million, annual turnover up to Rwf 50 million, and up to 100 employees; are exempted from trading license tax during the first 2 years following their establishment. They will only have to register at District level after the exemption period expires and begin paying trading license tax latest by January 31st, annually starting from the 3rd year following the incorporation date.

1.2.5.3. Registration of a domestic company (large company)

Large companies, those that fulfil at least two of the three following conditions: net capital investment above Rwf 70 million, annual turnover above Rwf 50 million, and above 100 employees; must register at sector level at the earliest in order to pay for trading license tax no later than January 31st each year.

1.2.5.4. Registration of a foreigner company (not VAT liable)

A foreign company operating in Rwanda is one registered abroad but conducting business locally through share transfer offices, property management, or agency services. The company code on the incorporation certificate also serves as the tax identification number (TIN) and social security number. VAT registration is required once the turnover exceeds Rwf 20 million in 12 months or Rwf 5 million in three consecutive months. Small and medium enterprises (SMEs) meeting specific investment, turnover, and employee criteria are exempt from trading license tax for their first two years but must register with the district and start paying the tax by January 31st of their third year.[88]

1.2.5.5. Registration of a foreigner company (VAT liable)

To register a branch of a foreign company in Rwanda, the company must establish a presence, such as a share transfer office or by managing property in the country. The company's incorporation certificate serves as both its Tax Identification Number (TIN) and social security number. VAT registration is mandatory if annual turnover exceeds Rwf 20 million or Rwf 5 million within three consecutive months. Small and medium enterprises (SMEs), with net capital up to Rwf 70 million, turnover up to Rwf 50 million, and up to 100 employees, are exempt from trading license tax for the first two years, after which they must register at the district level and start paying the tax by January 31st annually. Large companies, exceeding these thresholds, must register at the sector level early on and pay trading license tax by January 31st each year.[89]

This chapter examined the key concepts and theories related to corporate criminal liability. It begins with definitions and explanations of the conceptual and theoretical framework, ensuring that readers grasp the essential terms and the relevant legal theories that guide my analysis in the second chapter about the problematic of the protection of shareholders in case of company's criminal acts under Rwandan law. The chapter also covered the historical background of corporate criminal liability in Rwanda that will help to understand the problems that face shareholders when companies engage in criminal behavior.

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[88] https://afrisetup.com/rwanda/services/company-registration-in-rwanda/ company registration in Rwanda/registering a company in Rwanda.
[89] ibidem

CHAPTER 2. PROBLEMATIC OF PROTECTION OF SHAREHOLDERS IN CASE OF COMPANIES' CRIMINAL ACTS UNDER RWANDAN CRIMINAL LAW

Rwandan law recognizes that corporations are separate entities from the people who run them, and this includes holding them responsible for criminal actions. The country's criminal laws are designed in a way that limits how broadly and strictly they can be applied. This means that companies in Rwanda can be taken to court and charged with certain crimes.[90] In Rwandan legal system and in certain legal systems, ordering is a form of complicity through instructions given to the direct perpetrator of an offence.[91]

2.1. Penalties imposed on corporations

The legal entities' criminal acts are punished under article 25 of the law n°. 68/2018 of 30/08/2018: article 25: penalties applicable to institutions and organizations of the state and non-governmental organizations with the legal personality. This research analyzes whether the penalties outlined in Article 25 of Law No. 68/2018 protect shareholders when a legal entity is criminally liable. The study focuses on fines and dissolution as key penalties, while also examining other penalties to determine if they safeguard shareholders' interests when a company faces criminal sanctions.

2.1.1. Fine as punishment of corporations

Fines are a common form of criminal sanction, particularly for corporations, where they serve as a deterrent by targeting profitability. The rationale behind using fines is to deter corporate crime by making it financially unprofitable. However, fines have limitations, especially when they are so high that they may cause harm to innocent third parties, such as shareholders, consumers, or employees, who may bear the cost through lower dividends, higher prices, or job losses.[92] In the same idea, fines alone may not effectively prevent corporate misconduct, as they don't address the complexities of decision-making within corporations. Some managers may still engage in illegal activities if they believe the personal benefits outweigh the risks to the corporation.

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[90] https://brainajournal.com/manuscripts/Accepted%20Paper%20Salim_Final22.pdf critical analysis of corporate criminal liability in Rwanda

[91] https://www.hrw.org/reports/20 04/ij/ictr/6.htm case law of the international criminal tribunal for Rwanda

[92] https://journals.ezenwaohaetorc.org/index.php/ULJ/article/download/2687/2813 corporate crimes and punishment: the need for a rethink.
https://www.rra.gov.rw/fileadmin/user_upload/rra_interest_and_fines.pdf RRA interest and fines

As a result, while fines are the most frequently applied and least expensive sanction, they are not always sufficient on their own to control corporate criminal behavior, leading to the development of alternative sanctions. Fining legal entities, is to punish shareholders. Imposing criminal fines on corporations can indirectly reduce shareholder income or force the corporation to downsize, potentially causing employees to lose their jobs. Critics argue this scenario amounts to punishing others for crimes they did not commit, which they find unacceptable.[93]

Under Rwandan law system, corporate crimes such as extortion, article 171; fraud174, embezzlement or destruction of a mortgaged property178, of the Rwandan law no.68/2018 of 30/08/2018 determining offenses and penalties in general, and environmental crime article 56 of the law no.48/08/2018 are punished through fines, also the chapter VXII (article 339-353) of the law no 007/02 of 05/02/2021 provides acts of a company that are considered as offences and their penalties: simple fraudulent bankruptcy, acts which qualify as simple fraudulent bankruptcy ,grave fraudulent bankruptcy, fraudulent actions by directors of an insolvent company related to bankruptcy, poor book-keeping, refusal to provide information about an insolvent company, carrying on a business fraudulently, fraudulent acts committed by a director, disclosing information that may jeopardize investigation, disclosing false information on shares, contradicting a disqualification order and fraudulent dealing with bankruptcy[94]

Fines have the negative bias of affecting the business, including its licit developments. A certain level of decapitalization might be necessary to reallocate resources unlawfully earned by corrupt companies. The aim to fine must be to compensate the unfair competitiveness awarded throughout crime. However, resuming all penalties to fines and to specific prohibitions that endure decapitalization (such as debarment), is nothing but a counterproductive measure. Another option would be to sell the company. To sell a significant amount of its shares, granting that the people who owned it before the crime will no longer “put their hands” on the business. It is truth that such a measure would require an enormous institutional rearrangement, considering that in no country there exist such platforms to sell companies based on criminal conviction. Furthermore, the law would have to moderate the effects of crimes committed by companies they will not be sold in any case,

[93] ibidem

[94] See the chapter VXII of the law no. 007/2021 of 05/02/2021 governing companies

fines will not cease to exist, and competition issues must be addressed. In any case, the debate must be settled: we should stop over-fining companies that can be saved. We need to prioritize their potential to be compliant, to produce, to maintain jobs and to grow the economy.

Fines can have multiple negative effects on shareholders by reducing the profits available for distribution, which can lower dividends and negatively affect the share price. Additionally, fines can damage the company's reputation, leading to a loss of investor confidence and a subsequent drop in market value. For example, research has shown that penalties and legal sanctions can lead to significant stock price declines, reflecting the market's reaction to perceived increased risks and costs for the company.[95]

As seen above, fine is not a good measure of punishing companies' when they engage in criminal behavior because in looking of deterring the company it deters the wrong person and causes harm to them. It causes the loss of investment and the reputational damage to shareholders in regard on other companies' investors and their creditors.

2.1.2. Imposition of the ban

The imposition of the ban on the conduct of one or several professional or social activities, for a fixed period of time involves prohibiting a legal entity, such as a corporation, from engaging in specific professional or social activities for a determined period of time. This measure is typically imposed when the corporation has been found guilty of a criminal offense related to its professional or social activities, and the ban serves as a punitive and preventive measure. The idea is to stop the entity from continuing harmful practices and to signal to the public that certain behaviors will not be tolerated.[96]

The ban on the conduct of one or several professional or social activities for a fixed period of time, as stipulated under Article 25 of Law No. 68/2018, can have a profound impact on shareholders. and whether it protects them is complex and context-dependent.

[95]https://www.sciencedirect.com/science/article/abs/pii/S0304405X07001382 Journal of Financial Economics
[96] https://rwandalii.org/akn/rw/act/mo/2014/5/eng@2014-02-12 Rwanda Ministerial Order determining the Modalities for Execution of the Penalty Ban on entry into a Place or Restriction of Movement Ministerial Order 5 of 2014

the temporary cessation of activities can lead to financial losses, reduced market share, and damage to the company's reputation.[97] In the short term, shareholders may experience a significant decline in the value of their shares due to these disruptions. The risk of losing clients, contracts, and partnerships during the penalty period is also substantial, which could diminish future revenue streams even after the company is allowed to resume operations. Therefore, while the ban does not immediately obliterate shareholder investments, it places them at risk during the penalty period.[98]

This kind of punishment fit the corporation. I believe that it is a good measure of punishing corporation as it limits future harm by allowing the rehabilitation of the company. By the time the company is been banning from conducting certain activities, responsible directors or managers review the compliance program of the company and their governance reform. Unlike fines or dissolution, a ban on certain activities does not eliminate the legal entity itself, which can be seen as a form of protection for shareholders but Shareholders may face a decrease in share price due to the market's negative reaction to the company's inability to operate at full capacity. This reduced valuation might not just be temporary depending on the length of the ban, competitors could seize market share, suppliers could cut ties, and customers could lose confidence, leading to long-term damage to the company's financial health. Therefore, while the penalty does not directly confiscate shareholders' assets, it may indirectly erode shareholder value through diminished company performance and market confidence.[99]

Finally, the impact of this penalty on shareholders can also depend on the level of shareholder involvement in corporate governance. In some cases, shareholders may be able to influence the company's response to the penalty, including decisions about restructuring, risk management, or diversification of activities to mitigate the impact. Shareholders with significant voting power or representation on the board of directors might be better positioned to protect their interests during the penalty period by advocating for strategic adjustments that minimize the financial fallout. However, the penalty's protective effect is contingent on the company's ability to withstand operational disruptions and maintain its competitive position. While it does not directly confiscate shareholder assets, it can indirectly affect the company's

[97] Financial impacts of criminal penalties on companies have been extensively analyzed in corporate governance literature, where the indirect consequences often outweigh the direct penalties. See, John Coffee, Corporate Crime and Punishment: A Non-Fiction Perspective, Oxford University Press, 2020.
[98] ibidem
[99]ibidem

valuation, profitability, and long-term viability. Therefore, its protective value for shareholders is nuanced and highly dependent on the company's resilience and strategic response to the penalty.[100]

In the context of our research study, we support that this penalty is a good measure of punishment of legal entities because it leads legal entities to rehabilitation, it serves as prevention of harms especially when the activity itself consist of an unlawful behavior and serves as a lesson to other legal entities.

2.1.3 Confiscation of the object

The confiscation of the object used or intended for use in the commission of the offense or the proceed thereof involves the legal seizure of items or assets that were either directly used in committing a crime or were intended to be used in such a way, as well as any financial gains (proceeds) obtained through the criminal activity. The rationale behind this measure is to deprive the offending corporation of the tools and benefits of its illegal actions, thereby reducing the incentive for engaging in criminal conduct.[101] If a company uses specialized machinery to illegally produce counterfeit goods, the machinery can be confiscated by authorities. If a corporation profits from insider trading, the profits gained from these transactions can be confiscated

The purpose of the confiscation is to prevent the company from continuing its illegal operations and serves as a tangible consequence of their actions, it also ensures that the corporation does not benefit from its illegal actions, thereby discouraging similar conduct in the future. The Confiscation serves as a strong deterrent by hitting the corporation where it often hurts the most its assets and profits. It aligns with the principle that offenders should not benefit from their wrongdoing, ensuring that crime does not pay. By removing the means or benefits of the crime, the penalty helps prevent future offenses and may encourage the corporation to adopt better compliance practices.The confiscation of objects used, intended to be used, or resulting from the commission of an offense is a penalty that can significantly impact both the legal entity and its shareholders.

[100] See Michael Jensen and William Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure," Journal of Financial Economics, 1976.
[101] https://www.tirwanda.org/IMG/pdf/status_of_assets_recovery_in_rwanda.pdf Status of Assets Recovery in Rwanda Promoting rule of law in Rwanda through sound enforcement of anti-corruption laws p9

Understanding how this penalty operates and whether it offers protection to shareholders requires an exploration of its direct effects on company assets and its indirect consequences for shareholder value:

2.1.3.1. Nature of the Confiscation Penalty

Confiscation, as outlined in Article 25 of Law No. 68/2018, involves the seizure of assets that were either instrumental in the commission of the offense or represent the proceeds of that offense.[102] The primary goal of this penalty is to prevent the company from benefiting from criminal activities and to eliminate the tools that facilitated the illegal behavior. From a legal perspective, confiscation serves both a punitive and a preventive function. For shareholders, the effect of this penalty depends largely on the nature and value of the confiscated assets. If the confiscated object is not central to the company's operations, the impact on shareholders may be minimal. However, if the confiscated object is a key asset such as machinery, vehicles, or real estate the penalty could have serious financial repercussions for the company, thereby affecting shareholder value.

2.1.3.2. Direct Impact on Shareholder Value

When a company loses an essential asset due to confiscation, it can directly reduce the company's ability to generate revenue. For instance, if a manufacturing company has a critical piece of equipment confiscated, it may no longer be able to produce goods at the same capacity, leading to decreased sales and profits. The immediate consequence for shareholders is a potential decline in the value of their shares as the market reacts to the company's diminished operational capacity.[103]

In cases where the confiscated asset represents the proceeds of criminal activity, such as illegal earnings, shareholders may experience a reduction in the company's capital. While this may not directly involve losing an operational asset, the loss of capital can still have a significant impact on the company's financial health, particularly if the proceeds were reinvested into the business or used to support dividends.

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[102] Law No. 68/2018 of 30/08/2018 on the Penal Code, Official Gazette of the Republic of Rwanda, No. Special of 27/09/2018, Article 25.

[103] Robert Cooter and Thomas Ulen, Law and Economics, 6th Edition, Addison-Wesley, 2012, pp. 315-320. The economic impact of legal penalties on corporate entities and shareholders.

As a result, shareholders might face lower dividends and a decrease in share price due to the weakened financial position of the company.[104]

2.1.3.5. Limiting Company Liability and Future Risks

On the other hand, the confiscation of such assets can be seen as a measure to protect the company and, by extension, the shareholders, from further liability. By seizing the objects or proceeds involved in the crime, the legal system removes the tools or benefits that facilitated the offense, potentially reducing the company's exposure to ongoing or future criminal activities. In this sense, confiscation could protect shareholders from more severe penalties, such as ongoing fines, further legal actions, or even dissolution of the company. Moreover, confiscation helps cleanse the company's assets of any illegal taint, which can be important for rebuilding the company's reputation. Reestablishing the company's credibility in the eyes of regulators, clients, and the public can be vital for restoring shareholder confidence and long-term value. In this way, confiscation could indirectly protect shareholders by preventing further legal consequences and enabling the company to move forward with a clean slate.

From a legal standpoint, the confiscation penalty does not directly target shareholders, as it is aimed at the company as a legal entity. This separation between the company and its shareholders is a key principle of corporate law, which generally protects shareholders from direct liability for the company's actions.[105] As a result, shareholders are not personally liable for the confiscated assets, which can be seen as a form of legal protection. However, the indirect financial impact of confiscation on the company can still affect shareholders through reduced share value and dividends.[106] Additionally, shareholders may have certain legal remedies available to them if they believe that the company's management failed to adequately protect the company's assets or engaged in misconduct that led to the confiscation.

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[104] Ibidem

[105] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=45100 Bernard S. Black, "Shareholder Activism and Corporate Governance in the United States," in The New Palgrave Dictionary of Economics and the Law, Palgrave Macmillan, 1998.

[106] Robert Cooter and Thomas Ulen, Law and Economics, 6th Edition, Addison-Wesley, 2012, pp. 315-320. The economic impact of legal penalties on corporate entities and shareholders.

In such cases, shareholders might pursue legal action against the directors or officers of the company to recover losses. These legal avenues offer an additional layer of protection by holding those responsible for the company's mismanagement accountable[107]

In my opinion, the Confiscation of assets linked to criminal activity is a protective measure of punishment of companies as it can act as a wake-up call for the company's management and board of directors, prompting them to strengthen internal controls and improve corporate governance practices. For shareholders, this can be a positive development, as better governance can lead to reduced risks of future legal troubles, which in turn can protect shareholder interests over the long term. Enhanced governance may also improve the company's overall performance by increasing operational efficiency and compliance with legal and regulatory standards. However, this protective effect depends on the company's ability to implement effective governance reforms in response to the penalty. While the immediate impact on shareholder value can be negative, particularly if the confiscated assets are central to the company's operations, the penalty also serves a preventive function by eliminating tools of criminal activity and reducing future liability risks. Furthermore, the penalty can prompt improvements in corporate governance, which may protect shareholders in the long run. Ultimately, whether confiscation protects shareholders depends on the company's ability to manage the aftermath of the penalty and implement necessary reforms

2.1.4. The placement under judicial supervision

This penalty consists in appointing a judicial authority or an independent monitor to oversee the operations of a corporation for a specified period. The goal is to ensure that the corporation complies with legal and regulatory standards and does not engage in further illegal activities. The supervision aims to correct corporate behavior, enforce compliance with the law, and prevent recidivism.[108] It often includes the implementation of new policies, regular reporting to the overseeing authority, and sometimes restructuring of the company's management. The Judicial supervision helps a corporation reform its practices without completely shutting down its operations, thereby balancing accountability with business continuity.

[107] http://dx.doi.org/10.1163/15718174-22012037 Patricia Faraldo Cabana, "Improving the Recovery of Assets Resulting from Organized Crime European Journal of Crime, Criminal Law, and Criminal Justice (2014).
[108] https://faolex.fao.org/docs/pdf/Rwa187909.pdf article 90 of the law no 68/2018 of 30/08/2018 determining offences and penalties

The imposition of the penalty of placement under the judicial supervision is provided in the article 90 of the law n° 68/2018 of 30/08/2018 determining offences and penalties: A court decision ordering placement of a company, a cooperative, a private entity or organization with legal personality under judicial supervision involves appointing a representative at their own expense and the representative's responsibility is specified by the court. Such responsibilities only cover acts that constituted the offence or those having given rise to the commission of the offence. Basing on the report of the representative referred to under Paragraph One of this Article, the judge may either pronounce a new penalty or suspend the penalty of judicial supervision previously pronounced at the request of the prosecution.[109]

The placement of a company under judicial supervision can have significant implications for shareholders: the reduction in shareholder Control in the loss of decision-Making power Judicial supervision often means that the company's management decisions are overseen or replaced by a court-appointed administrator. Shareholders may lose their ability to influence decisions through normal corporate governance mechanisms, such as voting at shareholder meetings; the financial Impact in the share value decline means that when a company is placed under judicial supervision, it signals financial distress or legal issues, which can lead to a decline in the company's share price. The perception of risk increases, leading to a potential drop in market value.

The placement of a company under judicial supervision can also have impact of the dividend’s suspension: Judicial supervision often leads to the suspension of dividend payments. This impacts shareholders who rely on dividends as a source of income; it causes the potential dilution: Depending on the outcome of the supervision process, there could be restructuring or recapitalization efforts that dilute the existing shareholders' equity; lead to the legal and financial uncertainty: the process can create uncertainty about the company’s future, which affects shareholder confidence. The outcome of judicial supervision might lead to restructuring, sale of assets, or even liquidation, all of which can negatively impact shareholders. Finally, in some cases, judicial supervision may also expose shareholders, particularly major or controlling ones, to further scrutiny or legal liabilities, especially if their actions contributed to the company’s distress; it can lead to the restructuring or rehabilitation of the company, shareholders could benefit in the long run.

[109] https://faolex.fao.org/docs/pdf/Rwa187909.pdf article 90 of the law no 68/2018 of 30/08/2018 determining offences and penalties

A revived company might regain value, and the share price could recover, though this is uncertain and depends on the effectiveness of the supervision and Shareholders may have limited legal recourse or influence during the period of judicial supervision: their ability to challenge decisions made by the administrator or influence the direction of the company is curtailed, often leading to feelings of powerlessness.[110]

This study support that the judicial supervision often comes at a significant cost to shareholders, including loss of control, financial losses, and increased uncertainty but it also offers a chance for company recovery to the company and prevent future harm to the entire company especially to the shareholders allowing them to review the compliance program of the company, making it complying with the law and to change directors and managers who lead the company to the perpetration of the criminal acts.

2.1.5 The punishment of permanent closure

The permanent closure of establishment in which incriminated acts have been committed or which have been use to commit such acts involves the indefinite shutdown of a specific establishment or facility where criminal activities were conducted or facilitated.

The aim is to prevent the recurrence of such illegal activities and to serve as a strong deterrent to other entities**.** By permanently closing the establishment, the law removes the physical space used for criminal acts, thereby eliminating the possibility of the corporation continuing its illegal operations in that location.[111] This penalty also sends a strong message to other businesses about the serious consequences of engaging in unlawful activities. Permanent closure can have significant financial and reputational impacts on the corporation, as it may lead to loss of business, layoffs, and long-term damage to the company's brand and credibility. It is often reserved for severe cases where the establishment is directly tied to the criminal behavior**.**[112]

The permanent closure of an establishment where incriminated acts has been committed can have severe financial implications for shareholders. When a business is permanently shut down due to criminal activity, the assets associated with that establishment are either seized,

[110] http://dx.doi.org/10.20473/ydk.v33i3.8427] (http://dx.doi.org/10.20473/ydk.v33i3.8427 Supardi, "Third Party's Asset Confiscation in Corruption Crime" Yuridika Journal (2018).
[111] https://faolex.fao.org/docs/pdf/Rwa187909.pdf article 25of the law no 68/2018 of 30/08/2018 determining offences and penalties
[112] ibidem

liquidated, or rendered valueless. This leads to a significant reduction in the company's overall assets and profitability, which directly impacts the shareholders' equity. The closure can cause the company's stock value to plummet, as the market reacts negatively to the loss of revenue-generating facilities and the reputational damage associated with the criminal allegations.[113]

The permanent closure of an establishment also creates long-term strategic challenges for shareholders. The company may need to restructure its operations, which could involve selling off assets, merging with other companies, or even declaring bankruptcy. These strategic decisions often dilute shareholder power and diminish the overall value of their holdings. Additionally, the closure may weaken the company's competitive position in the market, making it harder for shareholders to recover their losses or see future growth in their investments. The reputational damage associated with the closure can also make it difficult for the company to attract new investors, further diminishing shareholder value.

This penalty does not fit the corporation, because affects shareholders by rendering their investments worthless, as the company ceases operations and generates no further income. Shareholders, particularly minority ones, often have limited influence over decisions leading to closure, and they may face financial losses without compensation. In such cases, any remaining assets after satisfying debts may be distributed among shareholders, but this is often a fraction of their initial investment and it also cause the psychological impact, such as loss of trust in the business environment and reduced confidence in future investments, also plays a role in negatively affecting shareholders.

2.1.6. The punishment of permanent exclusion from public procurement contracts.

The permanent exclusion from public procurement contracts, either definitively or for a fixed period of time provide for by relevant laws consists of barring a corporation from participating in public procurement processes, either permanently or for a fixed period as

[113] https://d1wqtxts1xzle7.cloudfront.net/51030091/Global_Stakeholders_Corporate_Accountabi20161223-8710-1b3544h-libre.pdf?1482499839=&response-content-disposition=inline%3B+filename%3DGlobal_Stakeholders_corporate_accountabi.pdf&Expires=1724767285&Signature=SjJvKaw~Uzb95y6jGIvtD3SFgPCvuKkvwECVnz-Yv-PVYp-KOgmtRNZ4pSKfcbEDy~8YVqWwlKifnypx7OsLRU0QYdPNT0UB9jPkPqIRlz~UGVzx7DDA6Rhncc94RaULY7TLgu27Eob55xaL8fDIn4~uRsRMgeBrkAuVpv07~82hEhJhTDfVgSEZgm8-K7QlHxhyP4cIkIU-Dnsh2CSzS7gkS4tPQHP5eiubDRsnsvKhBYLM4AYv6DpwO3ljKTApHfIoYgAfvUPQlmXevN~y1TzsBJGvFZeRYv5lnFCjGa4toG~1sYAig7g7dxWtuKbHPb9gfeGlp0I84gIHeQG4tg__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA Global Stakeholders: Corporate Accountability and Investor Engagement by Duncan Mclaren, Lancaster university

determined by relevant laws. Public procurement involves contracts where companies provide goods, services, or construction projects to government entities. Being excluded from these opportunities can significantly impact a corporation, especially if public contracts are a substantial part of its business.[114]

Excluding a corporation from public procurement can prevent further legal and financial risks associated with ongoing investigations or potential future misconduct. This can protect shareholders from the fallout of legal penalties, including financial losses and a decline in share value. A company that is penalized but not dissolved can work to restore its reputation and stabilize its stock value, benefiting shareholders in the long term.

By barring the corporation from further questionable contracts, the penalty reduces the risk of financial mismanagement or illegal activities that could jeopardize the company's ability to repay its debts. This provides creditors with greater confidence in the company's future financial health**.** Ensuring that the company adheres to legal standards makes it a more reliable entity, which in turn protects the interests of creditors.

The exclusion from public procurement contracts can have a direct financial impact on shareholders access to these contracts, revenue drops, reducing profits and leading to lower or even suspended dividend payments. For shareholders, this translates to a decrease in the return on their investment, as the company's ability to generate income diminishes. Moreover, the exclusion can damage the company's reputation, leading to a decline in its market value. Shareholders may see the value of their shares fall as investors lose confidence in the company's future prospects. This loss in value can be particularly concerning for long-term investors who may see their investments erode due to factors beyond their control.[115]

In the long run, shareholders may also face risks associated with the company's recovery after the exclusion period. Even after the exclusion ends, the company may struggle to regain its standing in the market, further prolonging financial difficulties. Shareholders might also consider legal action against the management if the exclusion was caused by misconduct, adding another layer of complexity and potential loss to their investments.[116]

[114] See article 25 of the law n° 68/2018 of 30/08/2018 determining offences and penalties.
[115] ibidem
[116] ibidem

This penalty of exclusion from public contracts can lead to financial challenges for shareholders but it also prevents future harm to the whole company by allowing the corporation to refocus on compliant operations, potentially preserving jobs that might otherwise be lost if the company faced more severe penalties. Working in a company that is taking steps to comply with the law and improve its operations can lead to a more stable and ethically sound work environment, benefiting all employees.

2.1.7. The ban on issuing a cheque, credit card or negotiable instrument

This penalty prohibits a corporation from issuing cheques, credit cards, or other negotiable instruments. These are financial tools commonly used in business transactions to facilitate payment or transfer of money. The ban is typically imposed when a corporation has engaged in fraudulent or illegal financial activities involving these instruments.[117] By banning the corporation from issuing cheques or other negotiable instruments, this penalty minimizes the risk of further fraudulent activities that could harm creditors. It prevents the corporation from making payments with instruments that might not be backed by sufficient funds or are otherwise compromised. The ban forces the corporation to use more traceable and secure payment methods, enhancing financial transparency.

For shareholders, when the Rwandan penal code imposes the sanction of the ban on issuing cheques, credit cards, or other negotiable instruments, it can significantly impact shareholders, as it limits the company's ability to conduct financial transactions efficiently. Such a ban hinders the company's liquidity and operational flexibility, making it difficult for the firm to meet its financial obligations. This creates uncertainty for shareholders, as the company's ability to generate revenue and manage cash flow is compromised, potentially leading to a decline in stock value.

Additionally, the restriction on financial instruments may damage the company's reputation. Shareholders rely on a company's ability to engage in regular banking and financial activities, and such a ban signals instability to the market. The inability to issue negotiable instruments like cheques or credit cards may affect the company's relationships with suppliers, creditors, and client. Suppliers and business partners may lose trust in the company's ability to meet its financial commitments, which could lead to more stringent terms or even a refusal to engage

[117] https://faolex.fao.org/docs/pdf/Rwa187909.pd f article 25 of the law no 68/2018 of 30/08/2018 determining offences and penalties

in further business dealings. A damaged reputation can lead to a reduction in market share, negatively affecting the company's growth potential and further eroding shareholder confidence.

Furthermore, shareholders may face challenges in raising additional capital or obtaining loans, as potential investors and lenders may view the ban as a red flag.[118] The restriction can lead to a decline in share price as investors may perceive the company as high-risk. This decrease in share value impacts both existing shareholders and the company's ability to attract new investors, thereby exacerbating financial difficulties. The overall effect is a deterioration of shareholder wealth, both in terms of the value of their shares and the company's capacity to distribute profits. Finally, shareholders may face indirect legal risks. If the company defaults on its obligations due to its inability to issue financial instruments, creditors might pursue legal action. In some cases, shareholders could be impacted if the company's assets are liquidated to satisfy debts, leading to a loss of their investment.[119]

This study support that, this punishment should not be applied to companies as it private them for making profit and put the company in the incapacity to payback its debts, a situation that can push investors to take a legal action against the company and as a result of that legal action, shareholders may lose their investment.

2.1.4 The punishment of dissolution of the company

The dissolution or winding up of a company is often regarded as the corporate equivalent of capital punishment, marking the end of its existence. This process involves liquidating the company's assets to distribute them to rightful claimants. Liquidation can either precede or follow the dissolution of the company.[120] Some scholars argue that dissolution should be reserved for cases where the corporation has committed serious crimes or was established for unlawful purposes. Others suggest that dissolution should be removed from the list of corporate sanctions altogether. For small or closely held corporations, dissolution alone may not be effective, as the controlling parties can easily reconstitute the business in a new form.

[118] https://corporatefinancelab.org/2021/12/14/shareholder-protection-in-share-issuances-a-comparative-law-and-economics-approach/ shareholders protection in share insurances: a comparative economic approach by Tom Vos
[119] ibidem
[120] https://www.eubelius.com/en/news/dissolution-or-liquidation-of-a-legal-person-in-the-course-of-criminal-proceedings Dissolution or liquidation of a legal person in the course of criminal proceedings: (in)admissibility of the criminal proceedings?

In the case of large corporations, the disruptive social and economic impact of dissolving the entire entity may outweigh the potential benefits. Ultimately, winding up or liquidation represents the termination of a company's existence.

The dissolution of a company as a penalty for criminal acts can be particularly detrimental to shareholders, exacerbating the usual negative consequences of a company's dissolution. When a company is dissolved as a penalty for criminal acts, the dissolution is typically enforced by a court or regulatory authority. This often means that shareholders have no recourse or opportunity to recover their investments. Unlike voluntary dissolution, where shareholders might receive some residual assets, criminal dissolution often results in total loss.

Shareholders may suffer reputational harm due to their association with a company involved in criminal activities. This can affect their personal and professional lives, especially if they are publicly linked to the company. Even if they were unaware of the criminal activities, the stigma can linger and impact future business opportunities. If shareholders have other businesses or investments, the criminal dissolution of one company could lead to a loss of confidence among investors, partners, and customers in their other ventures. This can result in broader financial and reputational damage across their portfolio.[121]

In cases where the company has been dissolved due to criminal acts, shareholders might find it challenging to seek compensation or recovery. Legal actions taken by victims of the company's criminal activities may take precedence over shareholders' claims, leaving them with little to no financial recourse. the dissolution of a company as a penalty for criminal acts is particularly damaging to shareholders, not only financially but also in terms of reputation, legal standing, and future business prospects. The effects can be far-reaching and long-lasting, making this a severe consequence for those invested in the company.

This study agrees that, this punishment of dissolution, is a bad measure because it marks the end of the company. As the legal personality of a person ends when he/she dies, the legal personality of the company ends at the time of its dissolution.

[121]https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2093&context=mlr corporate dissolution for illegal, oppressive or fraudulent acts: the Maryland solution

The dissolution causes the loss of the investment of shareholders and as for the other penalties analyzed above, it also causes psychological damages. Those shareholders may not be accepted easily in other companies they can wish to invest because they don't trust on them.

2.1.8. The punishment of Publication of the penalty pronounced

The publication of the penalty pronounced is a sanction used in the context of corporate criminal liability. This measure involves publicly disclosing the details of the penalty imposed on a corporation as a result of its criminal conduct. The purpose of this sanction is to expose the wrongdoing of the corporation to the public, stakeholders, and potential clients, thereby serving as a deterrent to both the offending company and others.[122]

Publicizing the penalty can act as a strong deterrent against future misconduct. Corporations may be more inclined to comply with the law if they know that criminal acts could result in public embarrassment and damage to their reputation. This sanction can severely affect the corporation's public image, leading to loss of consumer trust, shareholder confidence, and potential business opportunities. It can also influence the company's market value.

The publication of a penalty pronounced against a company can have significant effects on shareholders, primarily by damaging the company's reputation. Negative publicity arising from the announcement of penalties can lead to a loss of trust among consumers, business partners, and investors. As a result, the market perception of the company may decline, leading to a decrease in stock prices. Shareholders, who are primarily concerned with the value of their investments, may see their shares devalued as a direct consequence of the penalty's publication.[123]

Furthermore, the penalty's publication may trigger increased scrutiny from regulatory bodies and law enforcement agencies, which could lead to further legal or financial consequences for the company. This increased attention might result in additional investigations or sanctions, which could further strain the company's financial resources.

[122] https://faolex.fao.org/docs/pdf/Rwa187909.pd f article 25 of the law no 68/2018 of 30/08/2018 determining offences and penalties
[123] https://www.cambridge.org/core/books/abs/political-economy-of-international-finance/ the political economy of international finance: Regulating capital flows and Globalization.

Shareholders could face reduced dividends or delayed returns as the company reallocates resources to address legal challenges, penalties, or reputational damage, affecting the overall profitability of their investments.

Finally, in cases where the penalty suggests internal governance issues, shareholders might lose confidence in the company's leadership and management. This loss of confidence can lead to shareholder activism, demands for management changes, or even legal actions against the company's directors[124]. The relationship between shareholders and the company's leadership could become strained, potentially leading to long-term instability within the company. Such instability can deter future investors and create an environment of uncertainty, further impacting shareholder value[125].

This study support that, even if the publication of penalties seems to promotes transparency by informing the public about corporate malfeasance and the legal consequences that follow, it directly affects shareholders by eroding their investment value and confidence. I believe that there is no bad punishment to impose on a company than that which deteriorate its reputation. The negative publicity and potential financial strain from legal repercussions can lead to a drop in stock prices and reduced dividends, impacting shareholders' returns. Additionally, the erosion of trust in the company's leadership may result in increased shareholder activism and instability, further diminishing their investments. Thus, shareholders are profoundly impacted by the fallout from such penalties, underscoring the importance of proactive risk management by companies to protect shareholder interests.

2.2. The Limited protection of shareholders

The legal framework in Rwanda for holding legal entities criminally liable for their unlawful acts includes provisions intended to protect shareholders but these protections, may be inadequate in preventing collateral damage to these group.

2.2.1. Provisions for Limited Liability

Rwandan company no.007/2021 of 05/02/201 under the article 2 paragraph 25 governing companies, following the general principles of corporate law, typically provides for limited liability, meaning shareholders are not personally liable for the company’s debts or criminal

[124] ibidem
[125] ibidem

acts beyond their investment in the company. This principle aims to protect shareholders from personal financial loss beyond their capital contribution.[126] This means that shareholders are not personally liable for the company's debts or criminal acts beyond their investment in the company.

Shareholders may be protected from direct criminal liability, but the law holds directors and managers accountable for criminal acts, directors and managers can be held criminally responsible for offenses committed by the company if they were involved in or negligent about the criminal acts. This provision indirectly protects shareholders by placing responsibility on those in executive roles rather than on shareholders themselves. Shareholders have the right to access information about the company's operations and financial status, which is critical for protecting their interests, article 228 of the law n° 007/2021 of 05/02/2021 governing companies.

Shareholders can seek legal recourse if the company's criminal actions harm their interests. They may file lawsuits or seek remedies through the courts if they believe that company directors or other officers have breached their fiduciary duties. Article 6 of the Companies Act provides that shareholders can initiate legal proceedings for wrongs done to the company or to themselves as shareholders.

2.2.2 Corporate Governance Regulations

Regulations and guidelines on corporate governance are in place to promote transparency and accountability within companies. These may include requirements for internal controls, audits, and reporting that indirectly protect stakeholders by preventing corporate misconduct.[127]

In this context we ask ourselves a question to no whether these measures protect effectively shareholders, in case of companies' criminal acts. While limited liability protects shareholders from direct financial liability, it does not shield them from the indirect effects of corporate penalties, such as reduced share value or loss of investment. When a corporation faces criminal sanctions, its financial health can deteriorate, impacting shareholders' investments.

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[126] See the article 2 paragraph 25 of the law no. 007/2021 of 05/02/2021 governing companies
[127] ibidem

2.3. Some selected case in line with the subject matter

In analyzing the protection of shareholders in the context of companies' criminal liability, examining relevant case law provides crucial insights into how legal principles are applied and interpreted. This section explores key case related to shareholder protection when companies face criminal charges. By reviewing these cases, we gain insights into how courts balance the interests of shareholders with corporate accountability. These cases illustrate the challenges and legal principles involved, highlighting how shareholder rights are managed amidst corporate criminal liability.

2.3.1.The case of 14th January 2022 Rwanda SUPREME COURT-RP00372/2020/TGI/GSB (Uwera, P.J., Gaju, Mukayiza, j.)

In this case[128] heavy fines (117,086,575rwf) were imposed on four companies: HI-SENSE ENGINEERS AND CONSULTANTS Ltd, ETECO Ltd, TECOM Ltd, ECOBARUS Ltd which were both with their directors: Mubiru Godfrey, Eric Nteziryayo, Bertin Ahinkuye and Fidèle Safari accused of embezzlement, fraud, misappropriation of public funds, and falsifying and using false documents. even though these crimes were committed by their directors, who abused their power to harm the company COPCOM. The court, in its decision, linked each charge imposed on the individual directors to a fine against the respective companies. This constitutes a confusion of the legal personality of the company and that of its members.

I believe the four companies should not have been fined for crimes committed by their directors, especially since these acts were for the directors' personal benefit and not in the interest of the companies they managed. By imposing fines on these companies, the court created a conflict of interest and victimized the shareholders, who were unaware of the malicious intent of their directors. I don’t say that those companies should have not been punished but the court should make the punishment fit. The punishment of those companies should have been proportional the degree of their complicity in the perpetration of the crimes mentioned if proved.

[128] Www. Rwanda judiciary.com, https://decisia.lexum.com/rlr/ic/kn/item/521166/index.do The prosecutor Vs GAHUMBA and others.

Since the four companies have a legal personality distinct from that of their shareholders and directors, they should have been represented by lawyers different from those representing the directors. This would have allowed them to demonstrate that the companies' missions were not centered on fraud, forgery, misappropriation of funds, and embezzlement, that the shareholders were not aware of the fraudulent activities of the directors, and that they could have prevented these crimes had they been informed. These lawyers would have also represented the shareholders' interests, as companies are primarily composed of the investments of their shareholders. Heavy fines, such as those imposed in this case, could lead to the loss of these investments and potentially make it difficult, if not impossible, for the companies to pay their creditors. Shareholders those four companies, for the protection of their investment, should take a legal action against those directors for the harm they caused to their companies' by abusing of their pawer to harm COPCOM Ltd.

2.3.2. The case of Rwanda supreme court-RS/INJUST/RP/00001/2022/SC (Ntezilyayo, P.J., Nyirinkwaya, Hitiyaremye and Muhumuza, j. June 17,22)

This case involves MUDENGE Emmanuel and others accused of tax evasion, forgery, and other crimes related to the use of forged documents and fraudulent transactions involving companies like MEEJI GROUP Ltd and PRECISION HEAVY MACHINERY Ltd.[129] Mudenge and his associates, including Rwanda Revenue Authority (RRA) officials Kayigi Habiyambere Aimable and Kayitana Innocent, were initially convicted by the Nyarugenge Intermediate Court. However, the defendants appealed, arguing that procedural errors had been made, particularly regarding the proper party to be charged with tax evasion. The High Court ruled in favor of the defendants, leading to their release**.** The court in a judgment "avant dit droit" has ruled that the prosecution's case regarding the crime of tax evasion was filed in accordance with the law. It has also ruled that the hearing of this case will continue on a date to be communicated by the Court Registry.

This case is a perfect example where we can once again see a company being convicted for the crimes committed by their managers. As companies lack the capacity to think of the perpetration of the crime, managers do and harm shareholders using companies. As Emmanuel could not perpetrate the crime of forgery and other crimes specified in this case, he used those companies he created to achieve his goal. his bad faith to those companies may

[129] https://decisia.lexum.com/rlr/sc/kn/521111/1/document.do The Prosecutor Vs MUDENGE and others

have bad consequences on shareholders in case the court had decided to fine them for the crime they had committed.

This chapter provided a critical analysis of the current legal regime in Rwanda for addressing the criminal acts of legal entities, with a focus on the inadequacies of fines as a punitive measure and examined how the reliance on fines can unfairly victimize innocent shareholders and who bear the financial burden, despite not being directly responsible for the crimes. It discusses the challenges these groups face when legal entities are penalized, especially through fines, and how this can lead to unfair consequences for shareholders. Finally, the chapter analyses a case law in line with the subject matter to show how practically Rwandan courts treat the problematic of the protection of shareholders when companies are accomplice of the criminal acts committed on their behalf by directors or senior managers and employes.

Expanding the analysis, we found that the Rwandan Penal Code, through certain provisions of Article 25, aims to protect shareholders from criminal liability when an offense is committed in the company's interest. It also seeks to limit recidivism and serve as a deterrent for other companies. However, other provisions within the same article restrict shareholder protection by imposing sanctions that impact their investment, reputation, and the future continuity of the company, even though these shareholders did not participate in or were aware of the commission of the offense. Therefore, we have considered mechanisms that can effectively prevent the impunity of those responsible for the offense while also protecting shareholders from unjust losses of their investment

CHAPTER 3. MECHANISMS THAT CAN BE ADOPTED TO INSURE THE EFFECTIVE PROTECTION OF SHAREHOLDERS.

The protection of shareholders in the event of companies' criminal liability is a critical issue, as criminal sanctions against a company can have far-reaching consequences on shareholders, affecting their investments, dividends, and overall rights. National courts play a crucial role in protecting shareholders. Courts can hold Directors and Officers Accountable. If corporate misconduct leads to criminal liability, courts can allow shareholders to sue directors and officers for breaching their fiduciary duties. The court can also Grant Compensation. Shareholders can seek compensation through civil suits if corporate criminal liability results in financial losses. It can finally stay proceedings. courts may stay proceedings in criminal cases to prevent adverse effects on innocent shareholders, particularly in cases where the

shareholders are not complicit in the criminal activities. To ensure comprehensive protection for shareholders, mechanisms can be legal mechanisms or institutional mechanisms:

3.1. Legal mechanisms

The legal mechanisms play an important role in ensuring the effective protection of shareholders when companies engage in criminal acts. These mechanisms include laws, principles and statutory framework that governs corporate conduct. To ensure the effective protection of shareholders Rwanda should adhere and adopt the following legal mechanisms:

3.1.1. Adopting the OECD Principles of Corporate Governance

The Organization for Economic Co-operation and Development (OECD) has established principles of corporate governance that serve as international standards for ensuring the rights and protections of shareholders.[130] Key principles include the fair and Equitable Treatment of Shareholders and the transparency and Disclosure. All shareholders, including minority shareholders, should be treated equitably. Mechanisms should be in place to prevent the misuse of corporate assets and to ensure that shareholders have the ability to seek redress and Companies should disclose relevant information, including risks related to criminal liabilities, in a timely and accurate manner, enabling shareholders to make informed decisions.

3.1.2. Harmonizing the existing laws with the UN Guiding Principles on Business and Human Rights (UNGPs)

The UNGPs emphasize the responsibility of businesses to respect human rights and avoid complicity in human rights abuses, which can result in criminal liability. Under the UNGPs, businesses are expected to conduct due diligence to identify, prevent, and mitigate risks, which indirectly protects shareholders by reducing the likelihood of criminal conduct. If a company is involved in criminal activities, shareholders should have access to effective remedy mechanisms, including judicial and non-judicial remedies, to protect their investments.[131]

[130] https://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf OECD (2015). G20/OECD Principles of Corporate Governance.
[131] https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf United Nations (2011). Guiding Principles on Business and Human Rights.

3.1.3. Reviewing the existing laws.

This revision of the existing law, aim to enforce rehabilitative punishment against the company, and to repeal the others provisions such as imposition of fine which by punishing the company, harm shareholders for the crimes they did not perpetrate and to impose dissolution on companies only when they have committed serious crimes.

Rwandan penal code seeks rehabilitation of legal entity by imposing the following penalties: the ban on the conduct of one or several professional or social activities, for a fixed period of time, confiscation of the object used or intended for use in the commission of the offense or the proceed thereof, permanent closure of establishment in which incriminated acts have been committed or which have been use to commit such acts, and the placement under judicial supervision.[132]

Rehabilitation aims to prevent future offenses by changing a defendant's behavior. Courts can implement rehabilitation alongside incarceration or probation. Traditionally, rehabilitation focuses on reforming the offender's tendencies to break the law. This process involves a transformation of the offender's character, turning them into law-abiding citizens through the application of generalizable penal techniques.[133]

There is a subtle distinction between rehabilitation and restoration. Some researchers argue that restorative and reparative theories are not primarily about sanctioning or punishment. Instead, they suggest that sentencing should shift away from punishing the offender towards restitution and reparation, aimed at addressing the harm done to both the victim and the community. Restorative theories have two components: the first is restoration as restitution or reparation, where a sanction is imposed to correct the damage caused. For instance, if a sanction results in compensating customers and removing profits obtained from wrongdoing, it achieves an important objective. The second component is restoration as rehabilitation, which, like traditional rehabilitation, is concerned with restoring the offender's behavior. In cases where adverse publicity leads to changes in policies and procedures, such measures can be characterized as rehabilitative or restorative. A company that is guilty of wrongdoing may find it necessary to acknowledge its mistakes, express remorse, and outline its intentions to correct the underlying issues.

[132] https://journals.ezenwaohaetorc.org/index.php/ULJ/article/download/2687/2813 corporate crime and punishment: the need for a rethink. mechanisms of punishing legal entities by protecting shareholders

Adverse publicity, as a form of corporate sanction, can lead to 'collective introspection' and a thorough examination of the reasons behind the misconduct. This reevaluation supports the rehabilitative goals of punishment. One objective of sanctioning companies is to ensure that they correct errors, such as inadequate controls or supervision, that led to the offense. This process involves a form of rehabilitation, although it focuses more on corrective actions than on expressing remorse. Consequently, a company may implement measures to reduce the likelihood of such mistakes occurring in the future.[134]

Rehabilitation, particularly when applied to companies, can play a significant role in protecting shareholders, creditors, and lower-level employees. By promoting the reform of corporate behavior and correcting underlying issues that led to misconduct, rehabilitation helps to safeguard the interests of these stakeholders in several ways: when a company takes corrective measures to prevent future misconduct, it can restore and maintain investor confidence. By addressing the root causes of corporate malfeasance, the company can stabilize its financial performance and reputation, ultimately protecting the value of shareholders' investments.[135]

Rehabilitation can reassure creditors that the company is taking steps to improve its internal controls and governance. This reduces the risk of financial instability or insolvency, which can threaten the repayment of loans and other obligations to creditors. Implementing rehabilitative measures often involves improving workplace conditions, ethical standards, and management practices. This creates a safer and more stable work environment for employees, reducing the likelihood of layoffs, reduced benefits, or other negative consequences that could arise from corporate wrongdoing. Rehabilitation helps to align a company's practices with ethical and legal standards, reducing risks and enhancing the long-term stability and success of the business, which in turn protects its stakeholders.[136]

3.1.4. Strengthening the imposition of fines to managers or directors

Directors have fiduciary duties to act in the best interests of the corporation, including the duty of care and the duty of loyalty. These duties require directors to make informed decisions and avoid conflicts of interest that could harm the corporation or its stakeholders. In

[134] https://journals.ezenwaohaetorc.org/index.php/ULJ/article/download/2687/2813. Corporate crime and punishment, the need for a rethink. mechanisms of punishing legal entities by protecting shareholders
[135] ibidem
[136] ibidem

the context of corporate criminal liability, directors must take proactive steps to prevent illegal activities within the corporation and mitigate any potential harm to shareholders, creditors, and employees.[137]

Directors should ensure that the corporation has effective compliance programs in place to detect and prevent criminal behavior. These programs can include regular audits, employee training on legal and ethical standards, and whistleblower protections. By fostering a culture of compliance, directors can reduce the risk of corporate misconduct and protect the corporation's stakeholders from the fallout of criminal prosecutions.

Under Rwandan law, the company act provides how the company should be managed by body of directors who are appointed by the general assembly of shareholders or those who have voting shares. Directors are appointed for the purpose of acting in the best interests of company /shareholders but the problem comes when they act in contrary. It is of no doubt that when they act in contrary, they are personally liable for the damage caused. The liability can be both civil and criminal depending on the act. Rwandan law provides both the two but do not clearly show the circumstances and the way of making directors liable.

One such mechanism is the derivative lawsuit, which allows shareholders to sue directors or officers on behalf of the corporation for breach of fiduciary duty. In Rwanda, the Companies Act provides for derivative actions, enabling shareholders to seek redress when directors or officers have engaged in wrongful conduct that harms the corporation. By empowering shareholders to take legal action, the law incentivizes directors to prioritize compliance and risk management, ultimately protecting shareholders from the consequences of corporate criminal liability.

3.1.5. Adopting the punishment of Community service

Community Service is an option the court may use when it has decided that a person's offending is serious and that she is suitable for making reparation by constructive unpaid work in the community. It should be physically and emotionally demanding of the offender in that it is a restriction of liberty, involves self-discipline and a respect for others and should

[137] https://rdb.rw/wp-content/uploads/2018/02/Company-Booklet1.pdf company act-Rwanda development board by Louise Kayonga

engage the offender in tasks or situations that challenge his/her outlook, experience and ability.

Community Service can therefore be a positive way of making an offender make reparation for offences and it can encourage personal growth and self-respect.[138] It shows the offender that the community is affected by criminality and the community can see that offenders can make a constructive rather than destructive contribution to the community.

Community service is an innovative criminal sanction where offenders repay the community for the harm caused by their actions through public-benefiting work. Courts can mandate corporate offenders to perform community service that addresses the damage caused by their crimes. However, it shouldn't be used as a substitute for financial penalties, as a direct fine is more effective for that purpose. Instead, community service should be ordered when the convicted organization has unique capabilities to address the harm.

The U.S. Guidelines support community service when a corporation can efficiently address the offense's damage, but they don't clearly differentiate between community service orders and remedial orders. While both aim to remedy harm, the distinction lies mainly in labeling.

The Guidelines suggest that community service should focus on remedying harm rather than serving purely punitive or deterrent purposes. Nonetheless, courts can structure community service to impact a corporation's reputation, serving both punitive and remedial goals. Involving top executives in these activities can enhance the punitive and deterrent effects, as the firm's reputation is less likely to change if only low-level employees are involved.

3.2. Institutional mechanisms

Companies themselves can institute mechanisms to protect shareholders in the face of potential criminal liability. These include the corporate Governance reform and the internal Compliance Programs.

[138] https://journals.ezenwaohaetorc.org/index.php/ULJ/article/download/2687/2813 corporate crime and punishment: the need for a rethink. mechanisms of punishing legal entities by protecting shareholders

3.2 1. Enhancing the corporate governance reform

One of the primary mechanisms for protecting stakeholders is through robust corporate governance. Corporate governance refers to the system of rules, practices, and processes by which a company is directed and controlled. The board of directors plays a crucial role in this system, overseeing the management of the corporation and ensuring that it operates in the best interests of its stakeholders.[139]

Corporate governance (CG) lacks a single, definitive definition and can be understood from different perspectives. It refers to the framework that guides and regulates business corporations, defining the distribution of rights and responsibilities among the board, managers, shareholders, and other stakeholders. This structure establishes the rules and procedures for decision-making on corporate matters, and it provides the framework through which the firm sets its objectives, determines how to achieve them, and monitors performance.

Corporate governance helps ensure that investors in a corporation receive fair returns on their investments. Without this assurance, external investors would be hesitant to lend to the firm or buy its equity, forcing the company to depend solely on its own generated funds. The legal and political environment plays a crucial role in shaping corporate governance, which in turn enhances a firm's performance. Stronger investor protections and a robust rule of law are therefore closely linked to effective corporate governance and better organizational outcomes.

The corporate governance reform refers to the process of improving the policies, practices, and structures that govern how a corporation is directed, administered, and controlled. The reform aims to enhance transparency, accountability, fairness, and responsibility within the legal entity to ensure it operates in the best interests of its shareholders and other stakeholders. Corporate governance reform involves involve changes to laws and regulations, the adoption of best practices, and the implementation of new internal controls and procedures. The ultimate goal is to strengthen the integrity and performance of corporations, mitigate risks, and foster sustainable economic growth.

shareholders, as owners of the corporation, have a vested interest in ensuring that the corporation operates within the bounds of the law. When a corporation is prosecuted for

[139] https://www.scirp.org/journal/paperinformation?paperid=99093 protection of shareholders rights

criminal acts, shareholders often suffer significant financial losses due to fines, legal fees, and a decline in the corporation's market value. To protect shareholders, corporate governance frameworks should provide mechanisms for shareholders to hold directors and officers accountable for failing to prevent criminal misconduct.

3.2.2. Harmonizing the Compliance program with the existing laws

A compliance program is a company's set of internal policies and procedures put into place in order to comply with laws, rules, and regulations or to uphold the business's reputation. A compliance team examines the rules set forth by government bodies, creates a compliance program, implements it throughout the company, and enforces adherence to the program. Compliance programs outline a set of guidelines and best practices that ensure a company's employees are following all relevant laws and regulations. it helps corporations protect their brand from scandal and lawsuits.[140] An effective compliance program should have clear policies, a healthy path of communication between employees and those who oversee the program, and not shy away from taking corrective action when the compliance program is breached.

Companies can establish internal compliance programs to prevent criminal activities and protect shareholders from the fallout of such activities. These programs may include Regular Audits and Assessments; Ethics Training and Whistleblower Policies[141].

3.2.2.1. Regular Audits and Assessments

These involve in ensuring that the company complies with legal standards and preventing activities that could lead to criminal liability.

3.2.2.2. Ethics Training

Providing training for employees on ethical behavior and legal compliance limit the perpetration of criminal behavior by changing the mentality of the whole members of the companies knowing the importance of the compliance of the norms of the companies'

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[140] https://www.investopedia.com/terms/c/compliance-program.asp compliance program, definition, purpose and how to create one

[141] Ibidem

objectives with the law and the consequences that the company could face when it norms or objectives don’t comply with existing laws.

In Rwanda the, the Rwanda development Board (RDB) oversees and regulates corporate activities, ensuring compliance with corporate governance standards and protecting shareholders’ interests**.** Also, the Rwanda Stock Exchange (RSE) provides a platform of securities trading and ensures transparency in financial reporting, in this way, it indirectly protects shareholders by maintaining market integrity.

3.3. Comparative analysis with other jurisdictions

To understand how Rwandan criminal law can protect shareholders effectively from the criminal liability of companies, it is important to compare its legal framework with those of other jurisdictions. In this perspective we have selected some jurisdictions to see the mechanisms they use to protect shareholders when companies’ commit criminal acts.

3.3.1. United States mechanisms

The Sarbanes-Oxley Act (2002) mandates strict corporate governance standards to prevent fraud and protect shareholders. Companies are required to implement strong internal controls, and executives can face personal liability for corporate misconduct.[142] The United States provides significant protections for shareholders through legislative frameworks such as the Sarbanes-Oxley Act of 2002. Enacted in response to major corporate scandals, this law aims to improve corporate governance and accountability.

The key provisions include the Internal Controls: Companies are mandated to establish robust internal control systems to prevent fraud and ensure accurate financial reporting; the Executive Accountability: Corporate executives, including CEOs and CFOs, are required to certify the accuracy of financial statements. If fraud or misrepresentation is found, these executives can be held personally liable, which indirectly protects shareholders by deterring corporate misconduct; the Whistleblower Protections: The Act also encourages the reporting of unethical practices by providing legal protections for whistleblowers, further enhancing the overall corporate governance environment that benefits shareholders. These mechanisms help

[142] https://www.congress.gov/107/plaws/publ204/PLAW-107publ204.pdf Sarbanes-Oxley Act (2002). Public Law 107-204, 107th Congress

ensure that corporate executives are held accountable, protecting shareholders from the fallout of criminal activities within the company.

3.3.2. United Kingdom mechanisms

The Companies Act 2006 provides mechanisms for shareholders to bring derivative claims against directors who fail to act in the company's best interests, including in cases where criminal liability arises from director negligence.[143]

The United Kingdom Companies' Act 2006 establishes clear frameworks that empower shareholders to protect their interests. Significant mechanisms include the derivative Claims: Shareholders have the right to bring derivative claims on behalf of the company against directors who have failed in their fiduciary duties, including cases where criminal liability has arisen due to director negligence or misconduct. This legal tool allows shareholders to seek justice and compensation without waiting for the company itself to act; Directors' Duties: The Act also emphasizes directors' responsibilities to act in good faith and in the best interest of the company, aligning the interests of directors with those of shareholders. Breach of these duties can result in personal liability, thus indirectly safeguarding shareholders from the consequences of corporate wrongdoing.

This legislative framework ensures that shareholders are not left powerless when corporate misconduct occurs, and it reinforces the directors' obligation to manage the company in a way that protects shareholder interests.

3.3.3. South Africa mechanisms

The King IV Report on Corporate Governance emphasizes the responsibility of companies to act ethically and protect shareholders by implementing strong governance practices.[144]South Africa's approach to protecting shareholders focuses on promoting ethical governance practices as outlined in the King IV Report on Corporate Governance. Although not a legally binding document, it provides influential guidelines that many South African companies voluntarily adopt.

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[143] https://www.legislation.gov.uk/ukpga/2006/46/ contents UK Companies Act 2006

[144] https://cdn.ymaws.com/www.iodsa.co.za/resource/resmgr/king_iv/King_IV_Report/IoDSA_King_IV_Report_-_WebVe.pdf Institute of Directors Southern Africa (2016). King IV Report on Corporate Governance for South Africa.

The key aspects include: the Ethical Leadership: The King IV Report emphasizes the role of the board in providing ethical and effective leadership, with a focus on sustainability and long-term shareholder value; Integrated Reporting: Companies are encouraged to produce integrated reports that provide a holistic view of the company's performance, including how governance, strategy, and sustainability impact shareholder value. This transparency helps shareholders understand the company's risks and ensures that they are protected from the adverse effects of unethical corporate behavior and the Accountability of the Board: The report also stresses that the board is ultimately accountable for the governance of the company, including ensuring compliance with laws and regulations, which indirectly protects shareholders from the consequences of criminal acts.

GENERAL CONCLUSION

This research aimed to critically analyze the protection of shareholders in the context of companies' criminal liability under Rwandan criminal law. Throughout this work, we explored the complexities surrounding the intersection of corporate crime and shareholder protection, with a focus on understanding the legal framework in Rwanda and proposing mechanisms to enhance shareholder protection.

In Chapter One, we laid the groundwork by delving into the conceptual and theoretical framework. This chapter emphasized key concepts such as corporate criminal liability, the legal personality of companies, and the position of shareholders within the corporate structure. By reviewing various theories of corporate liability, we established a foundation for understanding how criminal acts committed by legal entities can impact shareholders, who are often distinct from the individuals directly responsible for the wrongdoing.

Chapter Two addressed the problematic aspects of shareholder protection under the Rwandan legal framework. We analyzed the gaps in existing laws and regulations, particularly how they fail to adequately shield shareholders from the consequences of criminal acts committed by their companies through directors and managers. We examined specific provisions of Rwandan criminal law, company law, and related legal instruments to highlight the challenges shareholders face, including financial loss, reputational damage, and the potential erosion of their rights. This chapter also explored relevant case law in which we found the confusion of legal personality of the company with that of its members when it comes to fine companies.

Finally, the third chapter proposed mechanisms to ensure the effective protection of shareholders in the event of companies' criminal liability. This chapter recommended the adoption of stronger legal safeguards, such as clearer legislative guidelines distinguishing the responsibilities of shareholders from those of company directors and other stakeholders. Additionally, we advocated for enhanced judicial oversight and enforcement measures to ensure that shareholders are not unjustly penalized for the criminal actions of a company. Mechanisms such as indemnification provisions, insurance policies, and the development of corporate governance structures were discussed as essential tools to safeguard shareholder interests.

In conclusion, this research has underscored the importance of a balanced legal framework that holds companies accountable for criminal behavior while protecting innocent shareholders from undue harm. The Rwandan legal system must evolve to address these challenges by adopting more robust mechanisms that distinguish between corporate liability and shareholder responsibility, ultimately fostering a fairer and more just corporate landscape.

RECOMMENDATIONS FOR THE EFFECTIVE PROTECTION

In light of the analysis conducted in previous sections, it is evident that while Rwanda has made strides in addressing corporate criminal liability, there remains a need for more robust protections for shareholders. By examining best practices from other jurisdictions, we identified areas for improvement in Rwanda's legal framework. The following recommendations aim to enhance the protection of shareholders and ensure that corporate misconduct does not unduly harm their interests.

- **Strengthening the legal frameworks**

Rwanda should consider strengthening its national legislation to provide clearer and more comprehensive protections for shareholders, particularly in cases involving corporate criminal liability. This could involve explicitly defining shareholders' rights to take action when a company is accused of or convicted of criminal offenses. Legal reforms include creating mechanisms for compensation and stronger protections against the negative financial impacts of corporate criminality. Such frameworks should also consider giving shareholders greater access to legal recourse when directors' actions result in criminal liabilities.

Improving transparency involves mandating stricter disclosure requirements for companies, particularly regarding risks associated with potential or ongoing criminal liabilities. Companies should be required to provide shareholders with timely and accurate information on matters that may impact their financial interests, such as legal disputes, investigations, and any governance issues that could lead to criminal charges. This transparency allows shareholders to make informed decisions and hold companies accountable for their actions. It also enhances market confidence and protects shareholder value by preventing sudden financial shocks due to undisclosed legal risks.

- **Enhancing whistleblower Protections**

Robust whistleblower protections are critical in preventing corporate misconduct and safeguarding shareholders. Strengthening whistleblower protection mechanisms can encourage employees and other stakeholders to report unethical or illegal activities without fear of retaliation. Rwanda can consider implementing or enhancing legal protections for whistleblowers, ensuring that individuals who expose corporate criminality are shielded from harassment, job loss, or other negative consequences. Additionally, providing incentives for whistleblowers, such as financial rewards, could further encourage the reporting of misconduct, which ultimately helps protect shareholder interests by preventing long-term corporate damage.[145]

This means that, in the company when directors or managers lead the company to perpetrate crimes, employees can be willing to denounce the unlawful behavior and protect the whole company from the criminal liability but as they are powerless, they can be afraid of losing their jobs or to face other negative consequences. Therefore, in this section I request that a strong protection should be implemented for whistleblower when they intend to protect the company from the criminal liability.

- **Harmonizing the existing laws with the International Standards**

Aligning Rwanda's national laws with international standards and principles is crucial for ensuring that shareholder protections are consistent with global best practices. International frameworks such as the OECD Guidelines for Multinational Enterprises and the United

[145] https://www.oecd.org/gov/committing-to-effective-whistleblower-protection-9789264252639-en.htm OECD: Committing to Effective Whistleblower Protection

Nations Guiding Principles on Business and Human Rights (UNGPs) provide comprehensive standards for responsible business conduct. By adopting these principles, Rwanda can strengthen corporate governance, ensuring that companies operate ethically and that shareholders are protected from the fallout of criminal behavior. Promoting international standards also improves Rwanda's competitiveness in global markets and ensures that its corporate governance practices meet international expectations.

- **Increasing the institutional oversight**

Strengthening the role of national and regional institutions in monitoring and enforcing corporate governance practices is essential for protecting shareholders. Rwanda can enhance the effectiveness of regulatory bodies such as the Rwanda Development Board (RDB) and the Capital Markets Authority (CMA) by providing them with more resources and authority to oversee corporate conduct. These institutions should be empowered to investigate and address corporate misconduct proactively, ensuring that companies adhere to legal standards and governance best practices. Additionally, regular audits and assessments of corporate governance structures can help identify potential risks early and ensure that companies comply with regulations that protect shareholder interests. By implementing these recommendations, Rwanda can enhance its corporate governance framework and provide stronger protections for shareholders, ensuring that they are not unduly affected by corporate criminal liability and their investment are safeguarded.

This chapter has provided mechanisms and alternative approaches to better protect these innocent parties, suggested legal reforms and strategies to ensure that penalties more accurately target the culpable individuals within the corporation, rather than harming those who are not responsible. It has explored mechanisms for protecting shareholders against corporate criminal liability, covering international standards like the OECD Guidelines and UNGPs, as well as comparative approaches from jurisdictions such as the United States, United Kingdom, and South Africa. These examples highlighted the importance of strong legal frameworks, transparency, whistleblower protections, and ethical governance. For Rwanda, adopting a comprehensive approach that incorporates these best practices will enhance shareholder protection and promote a more accountable and resilient corporate environment.

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